

**CITY SCHOOL DISTRICT OF THE CITY OF CORNING
STEUBEN, SCHUYLER AND CHEMUNG COUNTIES, NEW YORK**

**REQUEST FOR PROPOSALS
TO FINANCE EQUIPMENT UNDER AN ENERGY PERFORMANCE CONTRACT
IN THE AMOUNT OF \$4,254,532**

Overview

The City School District of the City of Corning, Steuben, Schuyler and Chemung Counties, New York (the "District" or the "Lessee"), is seeking proposals (each, a "Proposal") from qualified respondents to be a third party lessor under a Lease-Purchase Agreement with the District (the "Lease"), the proceeds of which will be used to finance equipment for the implementation of certain energy conservation measures (collectively, the "Project") pursuant to an energy performance contract between the District and Day Automation Systems Inc. (the "Performance Contract"). The Performance Contract with Day Automation Systems Inc. was executed on February 23, 2020. NYSED approval for the proposed work under the Performance Contract is expected to be granted in May 2020. The District's 2019-2020 State building aid ratio is 81.3%.

The District seeks competitive proposals for a \$4,254,532 lease-purchase financing arrangement on the basis of a 15 year term with a final maturity on July 1, 2035.

Project Description

The Project contemplates the implementation of certain specified energy saving measures at various District buildings. The energy conservation measures to be financed are set forth in the attached Performance Contract.

Lease

Any proposed Lease shall define the purpose and objective of the financing and the rights and obligations of each party to the financing. Further, the Lease will clearly specify the applicable interest rate, as well as standard contractual terms and conditions. The form of the Lease-Purchase Agreement, and any related documents, including the escrow agreement, **must** be submitted with the proposal. Proposers must satisfy themselves that credit approval will be granted prior to submitting a proposal. All documents are subject to negotiation and modification by the District's local counsel and bond counsel. All agreements and contractual conditions are required to conform with the laws of the State of New York (the "State") including but not limited to, the General Municipal Law, the Local Finance Law, the Education Law, the Energy Law and the regulations of the State Education Department, the Commissioner of Education and the Office of the State Comptroller. The District's local counsel and bond counsel will review all draft documents before the submission of proposed final documents for consideration and/or approval by the Board of Education.

Lease Assignment

Assignment of the Lease and related documents by the successful proposer shall be subject to the prior written consent of the District. The Lease must state that any assignment or transfer of the Lessor's interest shall not be effective until the District has received prior written notice, signed by the Lessor, of the name, contact person, address, telephone number and tax identification number of the proposed assignee and the District has thereafter given its consent in writing. No assignment will be valid unless the Lessor has received the District's prior written consent thereto.

Amount

The amount to be financed under the Lease is \$4,254,532. The Lessor shall be responsible for all fees of the Lessor including legal, issuance, origination, escrow, commitment and closing costs. The District shall not incur or absorb any fees of the Lessor related to the Lessor's proposal, negotiations, closing or other activities related to this RFP or the proposed transaction. In the event that a transaction does not close due to the successful proposer's failure to meet the terms of this RFP, the successful proposer shall be responsible for any and all costs incurred by the District in connection with the failed transaction and its negotiation.

Specifications

Interest Rate The Lease Proposal must provide interest rate terms for a lease-purchase option with a final maturity on July 1, 2035, and shall state the interest rate(s) under any varying options under which the proposing

firm will provide the District with financing under the Lease. The Proposal must also cite the index and margin used in establishing the interest rates cited.

Prepayment The Proposal must state that the District will have the right, at its option, to prepay the principal portion outstanding on the Lease, in whole or in part, at any time following 30 days written notice to the Lessor. The Proposal must disclose additional fees and terms, if any, that are required upon the exercise of this prepayment right, in addition to interest payable. The Proposal must also disclose how such amounts are to be calculated in the event that the District exercises its right of partial or whole prepayment.

Lease Payments The District will make periodic payments to the Lessor under the Lease. The Lease shall separately state the principal and interest components of the periodic payments to be made thereunder, and shall clearly state the applicable interest rate. The total of these payments, which include both principal and interest components made by the District, shall result in substantially level or declining annual debt service for the fiscal years ending June 30, 2022 to 2035. Debt service payments shall be detailed in an amortization schedule prepared by the proposer and provided to the District with its Proposal. For illustrative purposes, please assume the following:

Closing Date: July 1, 2020

Interest Payments: July 1, 2021, January 1, 2022 and semi-annually thereafter on July 1 and January 1 of each year through July 1, 2035. Principal Payments: July 1, 2021, January 1, 2022 and semi-annually thereafter on July 1 and January 1 with the final principal payment to be made on July 1, 2035.

The Proposal must state that the interest rate and other terms cited in the proposal will be good through the closing date. The Lease shall not become effective until the delivery of funds.

Term The Lease-Purchase Agreement is scheduled to close on July 1, 2020, with a final maturity on July 1, 2035.

Escrow Upon closing, it is anticipated that lease proceeds will be deposited in an escrow account to be utilized over the course of the implementation of the Project (the "Project Fund"). All monies held in the Project Fund are monies of the Lessee and shall not be subject to levy, attachment or lien of the Escrow Agent. The Project Fund shall be free of any security interest of the Escrow Agent. **The escrow provider must be a bank or trust company located and authorized to do business in New York State. Investment and collateralization of the moneys in such fund will be at the direction of the District and must be in compliance with the New York State General Municipal Law Sections 10 and 11.**

1. At the option of the District, the moneys in the Project Fund may be held uninvested in the Project Fund. If invested, the Escrow Agent shall invest amounts on deposit in the Project Fund solely at the written direction of an Authorized Officer of the District. Such investments shall be limited to the following:
 - (a) Cash in interest-bearing FDIC-insured special time deposit accounts in, or certificates of deposit issued by, the Escrow Agent, and not in or by any other bank or trust company. Deposit amounts in excess of FDIC insurance limits will be collateralized pursuant to New York State General Municipal Law Sections 10 and 11.
 - (b) Obligations of the United States of America or obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America, or in obligations of the State of New York.
 - (c) Cash in an interest-bearing FDIC-insured NOW, checking, money market or other demand deposit account of the Escrow Agent and not in or by any other bank or trust company. Deposit amounts in excess of FDIC insurance limits will be collateralized pursuant to New York State General Municipal Law Sections 10 and 11.

(d) In the absence of written investment direction, the monies shall be held in an interest-bearing, FDIC-insured, money market demand deposit account of the Escrow Agent and not in or by any other bank or trust company. Deposit amounts in excess of FDIC insurance limits will be collateralized pursuant to New York State General Municipal Law Sections 10 and 11.

2. All investments described above shall be made and ownership recorded in accordance with all applicable requirements of Section 10 and Section 11 of the General Municipal Law.
3. The Escrow Agent expressly acknowledges that the Lessee is not authorized to invest in mutual funds registered with the Securities Act of 1933, as amended and operated in accordance with Rule 2a-7 of the Investment Company Act of 1940, as amended, including no-load money market mutual funds limited to investments in obligations of or guaranteed by the United States of America or in obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America, or any similar mutual fund or other money market or liquid deposit investment vehicles.
4. Monies and investments in the Escrow Fund shall not be subject to levy, attachment or lien by or for the benefit of the Escrow Agent or any creditor thereof.

Excess Proceeds In the event that there are excess proceeds available in the Project Fund at the end of the construction period, proceeds shall be transferred by the Escrow Agent to the Lessor and applied to the next succeeding lease payment and each lease payment thereafter until fully utilized. Such use of funds will not constitute lease prepayment and will not be subject to any administrative fees or charges.

UCC Filing The District will not provide a legal description for each District property in connection with this financing. In the event the winning bidder requires this information for the purposes of making a fixture filing pursuant to the applicable provisions of the Uniform Commercial Code, the winning bidder may obtain such information at its own effort and expense.

Warranties All manufacturers' warranties, expressed or implied, with respect to the Equipment acquired shall be assigned by the Lessor to the District.

Annual Appropriation The annual lease payments are subject to appropriation each year by the Board of Education of the District.

Non-Funding/Executory Clause Pursuant to the General Municipal Law §109-b, and the Energy Law §9-103 each Lease-Purchase Agreement shall contain an executory clause which shall state in substance, and as required by the cited statutes, that should payments not be appropriated by the District in any fiscal year the District will not be obligated to pay the amounts due beyond the end of the last funded fiscal year and no liability on account thereof shall be incurred by the District beyond the amount of such monies. The Lease is not a general obligation of the District. Neither the faith and credit nor the taxing powers of the District are pledged to the payment of any amount due or to become due under the Lease. In the case of a failure to appropriate, the sole security for amounts due under the Lease shall be the Equipment. In the event that no funds or insufficient funds are appropriated by the District to pay the Lease, the Equipment may be acquired and sold by or on behalf of the Lessor, provided that any excess proceeds from such a sale, after deduction for and payment of fees, expenses and any taxes levied on the sale, shall be paid to the District. Prior to the sale or seizure of such equipment, the District shall be provided adequate written notice, and shall have a period of not less than 90 days from such notice to cure any default. Should such a sale or seizure take place there shall be no disruption to the District's operations to the extent possible.

Financing Documents Following notification of the award, the prospective Lessor must provide the District with a draft of its proposed financing documents, together with notification of its credit approval for the transaction no later than June 10, 2020. All financing documents are subject to review, negotiation and modification by the District's local counsel and bond counsel. Closing is subject to the successful negotiation and approval of all

documents by the District's local counsel and bond counsel. The District reserves the right to rescind any award due to failure of successful negotiation of the parties to agree to the terms and conditions thereof, and to recover its costs in connection therewith. Closing is subject to final approval by the District's Board of Education by resolution.

Lease Termination Upon termination of a Lease through exercise of the District's option to prepay or through payment by the District of all Rental Payments and other amounts due with respect to the particular Equipment involved, the Lessor's security interest in such Equipment shall terminate, and the Lessor shall execute and deliver to the District such documents as the District may reasonably request to evidence the termination of the Lessor's security interest in such Equipment.

Tax Status The Lease shall qualify as a tax-exempt lease financing, that is, the interest component of the Lease will be exempt from Federal, New York State and, where applicable, New York City taxation. The Lease-Purchase Agreement will NOT be designated as "bank qualified" pursuant to Section 265(b)(3) of the Internal Revenue Code. The District will not defend or hold the Lessor harmless from any adverse changes in the tax status of the transaction, after tax yield or cash flows resulting from changes in the Federal or State tax codes or regulations. At closing, the Lessor will receive the approving opinion of Hawkins Delafield & Wood LLP, bond counsel to the School District, as to the tax-exempt status of the Agreement. Hawkins Delafield & Wood LLP, will be responsible for preparing the IRS Form 8038-G for the financing, for arranging for its execution, and for making a timely submission thereof to the Internal Revenue Service. Such submission will occur on or prior to the filing deadline of November 15, 2020 (assuming closing on July 1, 2020). The Lessor will be provided with the general form of the Form 8038-G for the transaction at closing.

Credit Rating The District's outstanding uninsured bonds are currently rated "Aa3" by Moody's Investors Service.

Binding Authority Each Proposal must be signed by an individual who is legally authorized to contractually bind the proposing firm. The Proposal shall remain in effect until the expected closing date of July 1, 2020.

Financial Information Links to select credit and project information may be found as follows:

- District Audited Financial Statements FYE 6/30/2018: <https://emma.msrb.org/ER1178760-ER921309-ER1321950.pdf>
- District Audited Financial Statements FYE 6/30/2019: <https://emma.msrb.org/ES1329489-ES1037242-ES1440129.pdf>
- 2019-20 Budget Information: <https://www.corningareaschools.com/docs/district/depts/8/2019-20%20budget%20document.pdf?id=1256>
- Official Statement related to the District's \$8,260,000 School District Bond Anticipation Notes issued in August 2019: <https://emma.msrb.org/IssueView/Details/ER392241>
- Energy Performance Contract between the District and Day Automation Systems Inc. dated February 23, 2020 is attached.

Evaluation Process

During the evaluation process, the District reserves the right, where it may serve the District's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

Amendments to RFP

Any verbal information obtained from or statements made by the representative of the District or its designee at the time of examination of the documents shall not be construed as, in any way, amending this RFP document or being binding upon the District. Only such corrections or addenda that are issued in writing to all proposers shall become a part of the RFP. Any addendum issued during the RFP process shall be included in the RFP response and become a part of any subsequent contractual agreement.

Legal Requirements

The Lease is required to conform to the laws of the State of New York, including, but not limited to, the General Municipal Law, the Local Finance Law, the Education Law, the Energy Law and regulations promulgated by the Commissioner of Education and the Office of the State Comptroller.

Submission Requirements

In addition to submitting a completed **Proposal Response Form** as attached hereto, each proposing firm must include:

1. Examples of its prior experience with three (3) similar size lease-purchase financings for school districts in New York State;
2. Three references from jurisdictions that your firm has provided lease-purchase financing to in the past year; and
3. Any other information that would favor the use of your firm by the District.

Proposals are due by **11:00 a.m. on Wednesday, June 3, 2020** by e-mail to:

Paul Webster

School Business Official

City School District of the City of Corning

pwebster@cppmail.com

Rick Ganci

Executive Vice President and Principal

Capital Markets Advisors

Tel: 716-662-3910

rganci@capmark.org

Questions regarding this RFP may be directed to Rick Ganci.

The District reserves the right, in its sole discretion, to reject any and all proposals, or any part thereof, received in response to this Request for Proposals, to waive formalities, to request additional information from any proposer, and to award and negotiate the terms of the contract with any proposer. The District intends to select the firm whose proposal is most advantageous to the District and best meets the District's overall needs for this lease-purchase financing, and not necessarily the firm with the lowest cost proposal. In determining which proposal is most advantageous and in the District's best interests, the District will evaluate, among other things, the overall financing cost (inclusive of any interest and fees) to the District, optional redemption provisions, responsiveness of each proposal to the terms of this RFP and applicable law, the terms and conditions of the proposed agreement, and the experience and reputation of the bidder in the State of New York. The District will not have any liability to any proposer for any costs or expenses incurred in connection with a response to this RFP.

All proposals shall be signed by an individual legally authorized to bind the proposing firm and the signer's name shall also be typed or printed to or under the signature together with his/her title or designation.

Following receipt of the completed proposals, tentative notification will be made to the prospective Lessor whose response best meets the District's needs and otherwise appears to provide the best basis for the award. It is expected that a formal award will be made by the Board of Education at its June 17th meeting. Note that the prospective Lessor must provide the District with a draft of its proposed financing documents, together with notification of credit approval in order for District officials to accept and grant final approval.

Summary of Estimated Dates

RFP sent to providers:	May 13, 2020
Proposal and Response Form Due:	June 3, 2020 (by 11:00 a.m.)
Selected Lessor Tentatively Approved:	June 4, 2020 *
Credit Approval Completed:	June 10, 2020
Draft Documents Delivered:	June 10, 2020
District Board Meeting Date:	June 17, 2020 Lease approved
Closing of Lease:	July 1, 2020

*Subject to Board approval.

The District reserves the right to modify these dates.

Thank you for your anticipated response.

END OF RFP

PROPOSAL RESPONSE FORM

June 3, 2020

Ladies and Gentlemen:

In response to the City School District of the City of Corning (the "District") Request for Proposals ("RFP"), the undersigned, an authorized representative of _____ commits such firm to enter into a Lease-Purchase Agreement to provide the required refinancing of the project cost including equipment provided to the District by Day Automation Systems Inc. under the Performance Contract that was referenced in the RFP. We understand that this Lease-Purchase Agreement is subject to the approval of the District's Board of Education. The submission of this Response Form indicates that we have read the District's RFP and are fully informed as to the extent and character of this request and we can satisfactorily comply with all specifications of the RFP.

We understand that the District will make payments under the Lease-Purchase Agreement in periodic installments, including interest and all financing costs. We understand the Lease-Purchase agreement will be funded (subject to the terms of the final documents and all applicable statues and regulations) following the approval of the District's Board of Education.

Our proposal, the terms of which are good through and including the anticipated closing date of July 1, 2020, is as follows:

The principal amount of the lease will be: \$4,254,532

Final Maturity will be: July 1, 2035

The interest rate on this loan will be: _____%

The index used to establish this interest rate is: _____

The margin added to the index to establish this interest rate is: _____

Prepayment Terms: _____

Lease payments will be payable on: _____

Other required fees, if any (please explain): \$ _____

Proposing Firm: _____

Contact: _____

Address: _____

Tel.: _____

E-mail: _____

Attachments: Sample Lease and Escrow Documents

AIA[®] Document A101[™] – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

(Paragraph deleted)

AGREEMENT made as of the Twelfth day of February in the year Two Thousand Twenty

BETWEEN the Owner:

(Name, legal status, address and other information)

Corning-Painted Post ASD
165 Charles St.
Painted Post, NY 14870

and the Contractor:

(Name, legal status, address and other information)

Day Automation Systems Inc.
7931 Rae Boulevard
Victor, NY 14564

for the following **GUARANTEED ENERGY MANAGEMENT AND SAVINGS** Project:

(Name, location and detailed description)

Energy Performance Contract
Corning-Painted Post Area School District

The Architect:

(Name, legal status, address and other information)

Hunt-EAS
100 Hunt Center
Horseheads, NY 14845

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

The parties should complete A101[™]-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[™]-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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

ARTICLE 1 THE CONTRACT DOCUMENTS

(Paragraph deleted)

§1.1 The Contract Documents consist of this Agreement, General Conditions of the Contract for Construction, Drawings, Specifications, Addenda issued prior to execution of this Agreement, the Contractor's response to the Owner's Request for Proposal, if any, other documents listed in this Agreement, including but not limited to Exhibits A, B, and C attached hereto and incorporated herein, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

§1.2 For the purposes of this Agreement the Contract Documents incorporate by reference the provisions of Energy Law 9-103 and 8 NYCRR 155.20 Energy performance contracts, including but not limited to the definitions set out at 8 NYCRR 155.20(b) and the provisions set out at 8 NYCRR 155.20(d).

§1.2.1 Owner certifies that in lieu of competitive bidding, this Agreement was procured pursuant to a request for proposal (RFP) process in accordance with the Owner's procurement policies and procedures adopted pursuant to applicable provisions of General Municipal Law section 104-b.

§1.2.2 Contractor acknowledges and agrees that this Agreement is subject to approval by the Commissioner of Education and it shall not be executory until approval of the Commissioner is obtained.

§1.2.3 Contractor guaranties recovery of contract costs from energy savings realized by the Owner during the term of this Agreement, which shall not exceed 18 years, or the useful life of the equipment being installed, whichever is less. This recovery guaranty shall be based on an analysis of energy costs and savings, which shall not include any cost savings attributable to State building aid. If a simple payback calculation is used to demonstrate compliance with the 18-year payback limitation, it shall be calculated by dividing the initial contract cost by the first year cost savings.

§1.2.4 Contractor agrees and confirms that the measurement and verification techniques for determining cost savings shall be performed in accordance with North American Energy Measurement and Verification Protocol, March 1996 (U.S. Department of Energy, Washington, DC 20585).

§1.3 This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.

§1.4 Unless contrary to Applicable Law, the CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to DAY AUTOMATION and agrees not to disclose it or otherwise make it available to others without DAY AUTOMATION's express written consent.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall

(Paragraphs deleted)

be the date of this Agreement.

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire

(Paragraphs deleted)

Work by the following date: within 12 months of NYSED approval.

(Paragraph deleted)

(Table deleted)

(Paragraph deleted)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum as set forth in this Agreement. See Exhibit "B" Payment Schedule.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

ARTICLE 5 PAYMENTS

§ 5.1 Payments

§ 5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract as set forth in attached Exhibit B "Payment Schedule".

(Paragraphs deleted)

ARTICLE 6 DISPUTE RESOLUTION

(Paragraphs deleted)

§ 6.1 Mediation

Paragraphs deleted

§ 6.2 Binding Dispute Resolution

The method of binding dispute resolution shall be

(Paragraphs deleted)

litigation in the New York State Supreme Court with jurisdiction over the Project location.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

Init.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that Contract Document as modified and/or as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

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

Corning-Painted Post ASD
165 Charles St.
Painted Post, NY 14870
Paul Webster – School Business Official
607-963-3704

§ 8.3 The Contractor's representative:

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

Day Automation Systems Inc.
7931 Rae Boulevard
Victor, NY 14564
Steve Heaslip
315-400-7837

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in Article 11 of AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide Performance and Labor and Material Payment Bonds written on unmodified AIA Document A311 Feb 1970 ed., each bond to be in the amount of the Contract Sum, each bond must have the signatures of the Surety and the Principal acknowledged by a notary and comply with the requirements of Article 11 of AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified.

§ 8.6

(Paragraphs deleted)

Other provisions:

(Paragraphs deleted)

§ 8.6.1 Contractor acknowledges that the Owner is a school district which is subject to various laws and regulations of the State of New York. The Contractor represents that it is familiar with such laws and regulations as they pertain to the bidding and construction of the Project including, but not limited to, the requirements of Article 5-A of the General Municipal Law (sections 100 & ff., "Public Contracts"); Article 9 of the Education Law (sections 401 & ff., "School Buildings and Sites"); and Sub-Chapter J, Part 155 of Title 8, Chapter II of the Codes, Rules and Regulations of the State of New York (Regulations of the Commissioner of Education, "Educational Facilities"), to the extent that they pertain to the Project. The Contractor will exercise professional care and judgment to perform services in accordance with the requirements of these and other applicable laws, rules and regulations.

Init.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as modified
- .2 AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified

(Paragraphs deleted)

- .3 Drawings

(Table deleted)

& Specifications

As designed by Hunt EAS and approved by NYSED

(Paragraphs deleted)

- .4 Other Exhibits attached hereto and hereby incorporated herein and made a part of the Contract Documents:

(Paragraphs deleted)

Exhibit A – Scope of the Work

Exhibit B – Payment Schedule

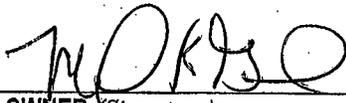
(Paragraphs deleted)

Exhibit C – Performance and Savings Guaranty

(Table deleted)

(Paragraphs deleted) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. Delivery of this Agreement, including all attached exhibits, with a signature page containing one or more signatures by facsimile or other electronic means shall be as effective as delivery of the original signature page to this Agreement. This Agreement shall not be binding until both the Owner and the Contractor have caused it to be signed by authorized agents.

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



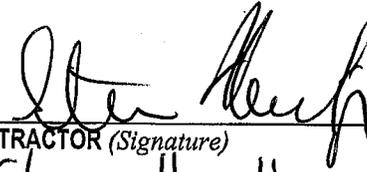
OWNER *(Signature)*

Michael K. Grunski

(Printed name and title)

2/13/2020

(Date signed)



CONTRACTOR *(Signature)*

Steve Heaslip - Energy Sucs. Mgr.

(Printed name and title)

2/14/20

(Date signed)

Init.

AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

for the following **GUARANTEED ENERGY MANAGEMENT and SAVINGS PROJECT:**
(Name and location or address)

Corning-Painted Post ASD
165 Charles St.
Painted Post, NY 14870

THE OWNER:
(Name, legal status and address)

Corning-Painted Post ASD
165 Charles St.
Painted Post, NY 14870

THE CONTRACTOR:
(Name, legal status and address)

Day Automation Systems, Inc.
7931 Rae Boulevard
Victor, NY 14564

TABLE OF ARTICLES

- | | |
|----|---------------------------------------------------------|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

Init.

- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6

Concealed or Unknown Conditions, Claims for

3.7.4
Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, 4.2.4

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Init.

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**

Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of
1.1.8

Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7

Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy
9.9.1

Insured loss, Adjustment and Settlement of
11.5

Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
13.5

Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written
4.2.11, 4.2.12

Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes
8.3.1

Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4

Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1

Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, **10.3**

Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,
15.4.1.1

Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Init.

Project, Definition of
1.1.4
 Project Representatives
 4.2.10
Property Insurance
 10.2.5, **11.2**
 Proposal Requirements
 1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
 Regulations and Laws
 1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
 Rejection of Work
 4.2.6, 12.2.1
 Releases and Waivers of Liens
 9.3.1, 9.10.2
 Representations
 3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
 Representatives
 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
 Responsibility for Those Performing the Work
 3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
 Retainage
 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field
Conditions by Contractor
3.2, 3.12.7, 6.1.3
 Review of Contractor's Submittals by Owner and
 Architect
 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
 Review of Shop Drawings, Product Data and Samples
 by Contractor
 3.12
Rights and Remedies
 1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
 12.2.4, **13.3, 14, 15.4**
Royalties, Patents and Copyrights
3.17
 Rules and Notices for Arbitration
 15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
 3.3.1, 4.2.2, 4.2.7, 5.3, **10.1, 10.2, 10.4**
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
 Schedules, Construction
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors
 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
 3.11, **3.12, 4.2.7**
Site, Use of
3.13, 6.1.1, 6.2.1
 Site Inspections
 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
 Site Visits, Architect's
 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
 Special Inspections and Testing
 4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
 1.1.1, **1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14**
 Statute of Limitations
 15.1.2, 15.4.1.1
 Stopping the Work
 2.2.2, 2.4, 9.7, 10.3, 14.1
 Stored Materials
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
 Subcontractors, Work by
 1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
 Submittals
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
 9.9.1, 9.10.2, 9.10.3
 Submittal Schedule
 3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
 6.1.1, **11.3**
Substances, Hazardous
10.3
Substantial Completion
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8, 9.9.1, 9.10.3, 12.2,**
 15.1.2
Substantial Completion, Definition of
9.8.1
 Substitution of Subcontractors
 5.2.3, 5.2.4
 Substitution of Architect
 2.3.3
 Substitutions of Materials
 3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2

Subsurface Conditions
3.7.4

Successors and Assigns
13.2

Superintendent
3.9, 10.2.6

Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience
14.3

Suspension of the Work
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes
3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor
14.1, 15.1.7

Termination by the Owner for Cause
5.4.1.1, 14.2, 15.1.7

Termination by the Owner for Convenience
14.4

Termination of the Architect
2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT
14

Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

TIME
8

Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work
9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK
12

Uncovering of Work
12.1

Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3

Unit Prices
7.3.3.2, 9.1.2

Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site
3.13, 6.1.1, 6.2.1

Values, Schedule of
9.2, 9.3.1

Waiver of Claims by the Architect
13.3.2

Waiver of Claims by the Contractor
9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages
14.2.4, 15.1.7

Waiver of Liens
9.3, 9.10.2, 9.10.4

Waivers of Subrogation
6.1.1, 11.3

Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays
8.3, 15.1.6.2

Work, Definition of
1.1.3

Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations
4.2.11, 4.2.12

Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

§ .01 **The General Conditions** of the Contract for Construction, AIA Document A201, 2017 Edition, Articles 1 through 16 inclusive, as modified herein, is hereby designated as one of the Contract Documents, and shall govern the work under this Contract.

Architects

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Bidder's Proposal for Guaranteed Energy Management and Savings, the modified AIA Document A101-2017 Guaranteed Energy Management and Savings Agreement (the Agreement), the General Conditions of the Contract for Construction, Drawings, Specifications, Addenda issued prior to execution of the Agreement, other documents listed in the Agreement, and Modifications issued after execution of the Agreement. A Modification is (1) a written amendment to the Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.1.9 MISCELLANEOUS DEFINITIONS

§ 1.1.9.1 The term "Herein" shall mean the contents of the Contract Documents and / or the contents of the particular section where this term appears.

§ 1.1.9.2 The term "Indicated" as used herein shall mean shown on the Drawings or described in the Contract Documents.

§ 1.1.9.3 The term "Concealed" as used herein shall mean items hidden from sight in such locations as trenches, chases, shafts, furred spaces, walls, slabs, above ceilings and where in sight in crawl spaces or service tunnels.

§ 1.1.9.4 The term "Exposed" as used herein shall mean not "concealed" as defined herein and the spaces behind normally closed doors such as interiors of cabinets.

§ 1.1.9.5 The term "Product" as used herein shall include materials, systems and / or equipment.

§ 1.1.9.6 The term "Furnish" as used herein shall mean furnish and deliver to the jobsite all products necessary that are connected with the Work including unloading, handling, transporting unwrapping and inspecting those products to be installed.

§ 1.1.9.7 The term "Install" as used herein shall mean furnish all labor and perform all operations connected with assembly, erection, anchoring, installation of products or work, finishing, curing, finishing, cleaning and similar operations including supplying all necessary tools, rigging and equipment to do the work, and connect up, test, place in operation and service such products.

§ 1.1.9.8 The term "Provide" as used herein shall mean furnish, without limitation, all labor, products, materials, equipment, transportation, services, etc. required to install, complete the work, and /or to test and place in operation/service.

§ 1.1.9.9 The term "Piping" as used herein shall mean pipe, rigid conduit, fittings, valves, hangers and other accessories, which comprise a system.

§ 1.1.9.10 The terms "equal", "proper", "satisfactory", "workmanlike" and words of similarly implied interpretation, judgment or opinion, shall be understood to mean "in the opinion of the Architect.

§ 1.1.9.11 As used herein, the terms "General Contractor" and "General Construction Contractor" have the same meaning.

§ 1.1.9.12 Reference to Division 01: Where provisions of General Conditions relate to project administrative or

init.

work-related requirements of the Contract, those provisions (including, but not limited to, allowances, progress schedule, submittals procedure, temporary facilities, cutting and patching, record drawings and cleaning up) are specified in Division 01, General Requirements of the Specifications.

§ 1.1.2 The Contract

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

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by 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.

§ 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 Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 In the case of an inconsistency between or among the Contract Documents, the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive, in accordance with the Architect's interpretation.

§ 1.2.1.3 Scaling Drawings for dimensions, if done, is done at the Contractor's own risk.

§ 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.

§ 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 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."

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

§ 1.2.6 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.

§ 1.3 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.

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

- .1 **8 NYCRR 155.20**
- .2 The Agreement AIA Document A101-2017, as modified.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 The Supplementary General Conditions, if any.
- .5 The General Conditions of the Contract for Construction.
- .6 Drawings.
- .7 **Specifications.**

§ 1.4.2 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, (2) comply with the more stringent requirement, or (3) either or both in accordance with the Architect's interpretation. The terms and conditions of this subparagraph 1.4.2, however, shall not relieve the Contractor of any of the obligations set forth in paragraphs 3.2 and 3.7.

- .1 On the Drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small-scale drawings. Scaling Drawings for dimensions, if done, is done at the Contractor's own risk.

Init.

- .2 Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the project site and shall be responsible for the correctness of such measurements. 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 Architect for resolution before proceeding with the Work.
- .3 If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for review by the Architect before making the change.

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

§ 1.4.4 The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts or omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

§ 1.4.5 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 Architect shall be the sole and final interpreter and will issue a written decision to the Owner and the Contractor within seven (7) days of written notification. The Architect's decision shall be conclusive and final.

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraphs deleted)

Init.

§ 1.9 DISCLAIMER

In no event shall the Owner or the Architect have any responsibility for the Contractor's construction means, methods, techniques, sequences, procedures or for safety 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 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraphs deleted)

§ 2.1.1.1 Wherever the word "Owner" or a pronoun in place of it occurs in the Contract Documents it refers to the:

[list CSD]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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 reasonable accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.3.6 Drawings & Specifications Furnished

- .1 Subcontractors and other entities desiring copies of Drawings and other Contract Documents shall obtain them from the Contractor.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults, fails or neglects to carry out the Work in accordance with the Contract Documents and fails within a five (5) calendar day period after receipt of written notice from the Owner to commence and continue correction of such default, failure or neglect with diligence and promptness, the Owner may, without further notice (except to inform the Contractor its attempt to cure is inadequate) and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from Payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's and any respective consultants' additional services and expenses made necessary by such default, neglect or failure. If Payments then or thereafter due are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5.2 Such action by the Owner and amounts charged to the Contractor shall be equally binding upon the Contractor's Performance and Payment Bond Surety.

§ 2.6 In the event Contractor fails, refuses or neglects to perform closeout obligations, including without limitation performance of punch-list items, within sixty (60) days following the date of Substantial Completion, Contractor shall be liable to the Owner for any additional costs, including without limitation those charged by Architect, Attorneys, or others attributable to such failure, refusal or neglect.

§ 2.7 OWNER'S RIGHTS FOR USE OF PREMISES

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

§ 2.7.2 Should there be, in the opinion of the Architect or Initial Decision Maker, unwarranted delay on the part of any Contractor in completion of uncompleted work or other Contractor requirements, the Owner may have full or partial use and occupancy of any or all portions of buildings as required for moving in or installing furniture, fixtures, supplies or equipment and for general cleaning and maintenance work. In such event Contractor whose unfinished work is performed subsequently shall be responsible for the prevention of any damage to such Owner's installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.1.1 Where the words "Contractor", "Prime Contractor", or any reference to "each Contractor" occurs in the Contract Documents they shall mean the person, firms or organization having a Contract for the Work as set forth in the Agreement.

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect'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 By executing the Contract, Contractor represents and warrants to the Owner that:

- .1 Contractor is and will be financially responsible and has and will have sufficient liquidity to meet its financial responsibilities under the Contract and for all other Projects in which Contractor is or may become involved;
- .2 Contractor has carefully examined the Contract Documents and has visited and examined the site;
- .3 from Contractor's investigation, Contractor has satisfied itself as to the nature and location of the proposed Work, general and local conditions, and all matters which may in any way affect the Work or

- its performance; and
- .4 Contractor fully understands the intent and purpose of the Contract Documents.
- .5 The Contractor acknowledges that the Owner is a school district which is subject to various laws and regulations of the State of New York. The Contractor will, in each phase of the Contract, in accordance with applicable standards, comply with applicable laws and regulations as they pertain to the bidding and construction of the Project, including, without limitation, the requirements of Article 5-A of the General Municipal Law; Article 9 of the Education Law; and Sub-Chapter J, Part 155 of Title 8, Chapter II of the Codes, Rules and Regulations of the State of New York.
- .6 Claims for additional compensation and/or extension of time relating to Contractor's non-compliance with its representations and warranties in this sub-paragraph will not be allowed.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the 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 capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3

§ 3.2.3.1 The Contractor shall promptly notify the Architect, in writing, of any inconsistencies or errors to provide the Architect ample time for observation, investigation, detail drawings, etc.

§ 3.2.3.2 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.

§ 3.2.3.3 When required, off-site storage is the responsibility of the Contractor.

§ 3.2.3.4 The exactness of grades, elevations, dimensions or locations indicated on the Drawings or of Work installed by others is not guaranteed by the Architect or the Owner.

§ 3.2.3.5 Except as to any reported errors, inconsistencies, nonconformities or omissions, and to concealed or unknown conditions referred to in paragraph 3.7.4, by executing the Agreement, the Contractor represents the following:

- .1 The Contract Documents are sufficiently complete and detailed for the Contractor to (1) perform the Work required to produce the results intended by the Contract Documents and (2) comply with all the requirements of the Contract Documents.
- .2 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) 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.

§ 3.2.3.6 The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations indicated on the Drawings. Where the Work of this Contract connects or interfaces with existing or other work Contractor shall verify at the site all conditions of such existing or other work. Any errors due to the Contractor's failure to verify such information shall be promptly remedied by the Contractor at no additional cost to the Owner.

§ 3.2.3.7 Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all existing conditions and measurements. Any differences, which may be found, between actual measurements and dimensions indicated on the Drawings shall be submitted to the Architect for resolution before proceeding with the

Work. No extra compensation will be allowed for such discrepancies.

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

§ 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 condition of the Work and the Drawings, he shall immediately notify the Architect in writing. Whether or not an error is believed to exist, deviations from the Drawings and dimensions given thereon shall be made only after approval in writing is obtained from the Architect. Any work performed after such discovery without the approval of the Architect shall be at the Contractor's risk and expense.

§ 3.2.6 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 himself familiar with all conditions affecting the nature and manner of conducting the work.

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

§ 3.3.1.1 Coordination: The Contractor shall be fully responsible for the coordination of the relationship of the Work of its subcontractors and other Contractors and shall cross check all of its Instructions, Specifications, Drawings, Shop Drawings, Instruments of Service and installations with those of other Contractors and with existing conditions.

§ 3.3.1.2 The Contractor shall:

- .1 Review all specified construction or installation procedures, including those recommended by manufacturers,
- .2 Advise the Architect:
 - .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 Or of any objections the Contractor may have to the procedure; and
 - .4 Propose any alternative procedure, which the Contractor will warrant.

§ 3.3.1.3 Preconstruction Meetings: Prior to commencing the Work and before commencing certain portions of the work, the Contractor and its Subcontractors shall be required to participate in preconstruction meetings when deemed necessary by Architect to coordinate work between trades or to address concerns of the Owner.

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

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

§ 3.3.4 Where equipment lines or piping 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 his Contract. He shall coordinate the work of his several Subcontractors and prevent all interferences between equipment, lines of piping, architectural features, and avoid any unsightly arrangements in the exposed work.

§ 3.3.5 Shut Downs: Such work as connections to existing sewers, plumbing, heating and electric systems, shall be done at a time agreeable to the Owner and the Architect, and shall be determined and agreed to well in advance of the actual doing 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 designated representative of the Owner. The continued uninterrupted operation of all facilities of the building is essential.

- .1 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 Contract price except as otherwise specified.
- .2 No mechanical, heating, plumbing, sprinkler or electric services shall be interrupted at any time, except as approved in advance by the Owner. 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.
- .3 All material and manpower to do the work involved shall be at the job prior to interruption of services.

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

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect, the Contractor may make substitutions only with the consent of the Owner.

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

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

§ 3.4.5 The Contractor shall be responsible for the care and protection of all equipment and materials for its work of this project, including equipment and material furnished by the Owner.

§ 3.4.6 Overtime: The 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.

- .1 The Contractor, before submitting its final proposal, shall make a survey of existing conditions and proposed schedule, and determine the amount of overtime and premium time labor which may be required to do the work, and include in its final proposal the cost of such labor.

.2 The Contractor shall abide by all regulations of the New York State Commissioner of Education, including without limitation those that may affect the schedule of the Work.

§ 3.4.7 Contractor shall warrant that it has good title to all materials used by it as part of work of this Contract. No materials or supplies shall be purchased by 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.

§ 3.4.8 Contractor shall deliver all materials at such times as will ensure speedy and uninterrupted progress of work.

§ 3.4.9 All articles, materials and equipment shall be applied, installed, connected, used, cleaned and conditioned in accord with directions of manufacturer unless otherwise specified herein.

§ 3.5 Warranty

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

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

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

§ 3.5.4 The Contractor shall warrant all materials and operating systems to be free from any defects and faulty equipment for a period of one (1) year from the date the Architect or Owner recommends final payment, or where the performance of materials, system or equipment is documented, from the date that such materials, systems or equipment perform satisfactorily. The Performance and Payment bonds shall remain in full force and effect through the guarantee period.

§ 3.5.5 In emergencies occurring during the warranty period, the Owner may correct any defect immediately and charge the cost to the Contractor. The Owner shall at once notify the Contractor, who may take over the Work and make any corrections remaining after his forces arrive at the Work. Any repair work not started within seven days following notice to the Contractor of any defect shall be considered an emergency.

§ 3.5.6 The Contractor shall obtain and furnish to the Architect written Manufacturer's Warranties for all major materials and for all equipment. The terms of the warranty shall be as individually specified for the item. If no term is specified, the term shall be for a minimum of one year.

§ 3.6 Taxes

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

§ 3.7 *[[need to insert and incorporate the Guaranteed Savings as a result of the project – should be an exhibit attached to the Agreement]]*

§ 3.6.1 Except as otherwise specified, all Federal, State and Local taxes are to be included in the Contract price.

§ 3.6.2 **Assessments and Taxes on Wages:** Each Contractor shall pay and include in his proposal all costs and liabilities for the amounts assessed, or which may be assessed by the Federal, State and local governments under any

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:14:53 ET on 12/04/2019 under Order No.7393968587 which expires on 09/08/2020, and is not for resale.

User Notes:

(842155886)

and all Acts or Laws upon the wages and salaries paid or to be paid all employees of the Contractor and his subcontractors under this Contract.

§ 3.6.3 Owner represents that it is an organization operated for purposes that make it exempt from New York Sales and Compensating Use Tax pursuant to Section 1115(a) (15) of the tax law, as amended by laws of New York 1974, CH. 513 and 514. The Contractor is advised that the Owner is exempt from payment of all State and Local sales and compensating use taxes of the State of New York, cities and counties on the purchase of all materials and supplies incorporated in and becoming an integral component part of the structures, buildings or real property, pursuant to the provisions of this Contract. Such taxes are not to be included in the Contract price, 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 the Contract, are not incorporated into the completed permanent work, and the Contractor and his subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property upon all such unincorporated supplies and materials. Owner shall deliver to Contractor the appropriate exemption certificate required to be supplied by the Owner and Contractor and his subcontractors and material men 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 they purchase supplies, materials and equipment for the performance of the work covered by this Contract.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Contractor shall secure and pay for all required permits, governmental fees, licenses, certificates of inspection, of occupancy, of underwriters and of all other required certificates for the work necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract which are legally required at the time the Contractor's proposal is received.

§ 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 and knows or should know it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, including applicable fines, and/or penalties.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed or affected work is performed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.7.6 The Contractor shall be responsible for securing and paying for permits for itself and its employees, as required by applicable law. Contractor represents that all such required licenses, fees or permits are or will be secured by the date of execution of the Contract, where possible, and in no case later than commencement of the Work. Failure to possess any such license constitutes a material breach of this Contract.

§ 3.8 Allowances

(Paragraphs deleted)

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall act in a managerial capacity to expedite, direct, supervise and coordinate the work. The superintendent also shall be in attendance at the Project site during performance of the Work as needed and as reasonably requested by the Owner. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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

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

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

§ 3.9.5 If, for any reason, the Contractor takes an action resulting in any of the changes noted in Subparagraph 3.9.4, the Owner or their Agent may take remedial action to insure continued progress of the Work, including the hiring of suitable supervisory personnel, and charge the Contractor all costs associated with these remedial actions including the costs of legal, and Architectural services.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

(Paragraph deleted)

§ 3.10.1.1 The Contractor shall prepare and from time to time revise a Project Schedule. Failure by the Contractor to furnish any required schedule or schedule revision in a timely manner shall entitle the Architect to prepare a schedule for that Contractor's Work, to which said Contractor shall be bound.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Architect that have been submitted to and reviewed by the Architect and approved by the Owner.

§ 3.10.4 Procedure and Schedule of Work

- .1 Unless otherwise stated the work on the entire project shall be performed continuously without interruption, so that all work can be completed in the time set forth in the Contract Documents.

- .2 The Contractor shall cooperate with the Owner, and the sequence of operation shall be scheduled with the Owner so as to interfere as little as possible with the Owner's use of existing site and existing structures and the Owner's approval shall be obtained prior to the starting of such operations.
- .3 Time of Completion: All work shall be completed on or before the date set forth in the Agreement, except as otherwise specified or modified by written mutual agreement.
- .4 Job Meetings: During the course of construction, job meetings will be held with representatives of the Owner, the Architect and Engineers and the Contractor to discuss the progress of the work, any problems of construction, timing or procedure, so as to expedite all phases of the work to completion. The Contractor and the Contractor's Subcontractors are to be represented at such meetings.
- .5 Overtime Work: The Contractor shall take into account the possible need for overtime work in order to meet the Contract Completion Date and shall include the costs associated with premium time in its Contract Sum.

§ 3.10.5 Project Scheduling

- .1 After the Contractor has received from the Owner a notice to proceed or a letter of intent, a preconstruction conference will be held. The procedures and scheduling of the Work will be discussed.
- .2 At the preconstruction conference, using the Project Schedule in Contract Documents the Contractor shall submit a project schedule to the Owner of its own Work indicating starting dates and estimated completion dates of each phase of the Work and indicating information described in Contract "Submittals", using the time of completion set forth in the Contract Documents.
- .3 Procedures and requirements described in the Contract Section on "Submittals" shall be followed by the Contractor to develop an integrated Project Schedule.
- .4 Once a Project Schedule is published and approved by the Owner, it shall be strictly enforced until the Project is completed, unless it becomes necessary to revise it by an appropriate modification.
- .5 Upon issuance of the approved Project Schedule, the Contractor shall be responsible for interfacing and/or integrating its Work with that of other Contractors and the Owner and for completing its Work in the allotted time.

§ 3.10.6 Continuing Performance and Schedule Adjustments

- .1 In the event the Owner and Architect determine that performance of the Work has not progressed to the level of completion required by the Approved Schedule the Owner shall have the right to order the Contractor to take corrective action necessary to expedite the progress of construction including without limitation overtime work, additional work shifts, supplying additional manpower or equipment as well as other extraordinary measures. Such extraordinary measures shall continue until the progress of the work conforms to milestone dates set forth in the Approved Schedule.
- .2 The Contractor shall not be entitled to additional compensation in connection with such extraordinary measures required by the Owner except when work progress is affected by events such as labor strikes or natural catastrophes.
- .3 The Owner shall have the right to direct the Contractor to delay, postpone or reschedule any portion of the Work that may interfere with or disrupt the operations of the Owner.

§ 3.11 Documents and Samples

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

Init.

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is 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 without action.

§ 3.12.4.1 Shop drawings and product submittals for all site improvement, architectural, structural, mechanical, electrical and signal work shall be submitted to the Architect for its review.

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

§ 3.12.4.3 The Architect's review of the Contractor's submittals is limited to an initial submittal and one (1) re-submittal. If the Architect is required to review additional submittals because the initial submittal and one (1) re-submittals failed to conform to the information given, and the design concept expressed in the Contract Documents, the Owner reserves the right to deduct any amounts paid to the Architect for additional re-submittal review services from payments otherwise due to the Contractor.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved 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.

§ 3.12.5.1 No extension of time will be granted to the Contractor because of failure to have shop drawings, product data, and samples submitted in ample time to allow for review by the Architect or their Consultants.

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities

Init.

for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

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

§ 3.12.10.2 If it is the position of the Contractor, or his licensed design professional, that the Owner and Architect have not provided all performance and design criteria, the Contractor shall request additional criteria in writing before proceeding with the professional services described in 3.12.10. Proceeding with the professional services shall be evidence that the Owner and Architect have provided all necessary performance and design criteria.

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

§ 3.12.10.4 Delegated design functions required by this Project shall be performed by New York licensees in accordance with Section 29.3(b) of the Rules of the Board of Regents.

§ 3.12.10.5 The provider of the delegated design services shall certify that the design work has been performed in accordance with Section 29.3(b) and the prevailing standards of practice expected of licensed design professionals in New York State for projects of similar size and complexity.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste

init.

materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 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 Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1

To the maximum extent permitted by law, the Contractor hereby assumes the entire responsibility and liability for any and all damage (direct or consequential) and injury (including death), disease or sickness of any kind or nature whatsoever, to all persons, whether or not employees of the Contractor, and to all property and business or businesses, caused by, resulting from, arising out of, or occurring in connection with:

- a. the Work;
- b. the performance or intended performance of the Work;
- c. the performance or failure to perform the Contract; or
- d. any occurrence which happens in or about the area where the Work is being performed by the Contractor, either directly or through a Subcontractor, or while any of Contractor's property, equipment or personnel is in or about such area; or
- e. New York State Labor Law, Article 10, including without limitation Sections 240, 241, 241-a and 241-b, thereof, as amended, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

§ 3.18.2 Except to the extent, if any, expressly prohibited by law, should any such damage or injury referred to in subparagraph 3.18.1 be sustained, suffered, or incurred by Owner or Architect, or should any claim for such damage or injury be made or asserted against any of them, whether or not such claim is based upon Owner's or Architect's alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of the Owner or Architect, Contractor shall indemnify and hold harmless Owner, or Architect, their Board of Education, Administration officers, agents, partners, and employees (hereinafter collectively referred to as "Indemnitees"), of, from and against any and all other loss, cost, expense, and liability, including without limitation, legal fees and disbursements, that Indemnitees may directly or indirectly sustain, suffer or incur as a result of such damages, injuries and claims; and Contractor agrees to assume, on behalf of any and all Indemnitees the defense (with counsel satisfactory to the party indemnified) of any action at law or in equity, or other legal proceeding, which may be brought against any Indemnitee upon or by reason of such damage, injury or claim and to pay on behalf of every Indemnitee, the amount of any judgment, decree, award, or order that may be entered against each said Indemnitee in any such action or proceeding. In the event that any such claim, loss, cost, expense, liability, damage or injury is sustained, suffered, or incurred by, or is made, asserted or threatened against any Indemnitee, Owner shall, in addition to all other rights and remedies, have the right to withhold from any payments due and to become due to Contractor an amount sufficient in Owner's judgment to protect and indemnify the Indemnitee(s) from and against any and all such claim, loss, cost, expense, liability, damage or injury, including legal fees and disbursements; or Owner, in its discretion, may require Contractor to furnish a surety bond satisfactory to Owner guaranteeing such protection which bond shall be furnished by Contractor within 5 days after written demand has been made therefore. In the event more than one Contractor is connected with an event or occurrence (or series of events or occurrences) covered by this indemnification, then all such Contractors shall be jointly and severally responsible to the Indemnitee, and the ultimate

responsibility among such indemnifying Contractors shall be settled or otherwise determined by separate proceedings and without loss, expense or damage to any Indemnitee.

§ 3.18.3 In any and all claims against the Owner or the Architect or their agents or employees by third parties, the indemnification obligation under this § 3.18 shall apply and shall not be limited by limitation or amount of or type of insurance or benefits payable to or for the benefit of the Contractor or Subcontractors.

§ 3.18.4 Contractor shall comply with, and cooperate with, Architect and Owner in complying with legal requirements. Among other things, Contractor shall be responsible for performing corrective work within any abatement periods prescribed by governmental entities including but not limited to OSHA, appealing from decisions or orders, requesting extensions on abatement periods, and furnishing such information or evidentiary material as may be necessary or as may be requested by Architect or Owner to fully protect the rights and interests of Owner, and Architect with respect to possible, threatened or pending proceedings or orders.

§ 3.18.5 Without limitation, Contractor shall indemnify Owner and/or Architect pursuant to paragraph 3.18 hereof..

§ 3.18.6 Natale Patent Rights. With respect to any Contractor performing asbestos abatement as part of its Scope of Work.

- .1 Contractor shall hold a valid current license to perform work using the negative pressure system covered by the Natale Patent or provide and Indemnity Agreement as follows:
- .2 Indemnity Agreement: Contractor and Contractor's surety agree to protect, indemnify and hold harmless the Owner, the Architect, and the Board of Education, Administration directors, officers, agents, employees, and assigns of the Architect from any and all claims, judgments, liabilities, expenses, attorney fees, court costs, or losses of any nature, resulting from claims of patent right infringement including but not limited to U.S. Patent Number 4,604,111, commonly known as the Natale Patent, arising out of the performance of Work on the Project.
 - (a) The provisions of this Indemnity Agreement shall protect the Indemnitees against all claims arising out of the subject matter or performance of this Contract and Contract Documents, including, without limitation, allegations or findings that the Indemnitees, or any of them, were guilty of negligence in the issuance of such Contract.
 - (b) The provisions of this Indemnity Agreement shall be in addition to and shall in no way delete any provisions, including warranty and indemnity provisions of the Agreement.

§ 3.18.7 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.19 PROTECTION OF BUILDING OCCUPANTS

§ 3.19.1 Owner or Tenant occupied areas of the building shall always comply with the minimum requirements necessary to maintain a Certificate of Occupancy.

§ 3.19.2 General safety and security standards for this project include:

- .1 All construction materials shall be stored in a safe and secure manner.
- .2 Fences shall be maintained around construction supplies or debris.
- .3 Gates in temporary fences shall always be locked unless a worker is in attendance to prevent unauthorized entry to the Contract areas.
- .4 During exterior renovation work, overhead protection shall be provided for any sidewalks or areas immediately beneath the work site or such areas shall be fenced off and provided with warning signs to prevent entry.
- .5 Workers shall wear photo-identification badges at all times for identification and security purposes.

§ 3.19.3 Separation of Construction Areas: Construction areas that are under the control of a Contractor and therefore not occupied by Owner or Tenants shall be separated from occupied areas. Provisions shall be made to prevent the

init.

passage of dust and contaminants into occupied parts of the building. Periodic inspection and repairs of the contaminant barriers must be made to prevent exposure to dust or contaminants. Each Contractor working inside the buildings shall temporarily seal doorways enclosing their work area, using heavy duty plastic, duct tape, etc. Repairs of the plastic and tape must be made in the event the tape becomes loose or the plastic is cut or torn.

- .1 Type "X" Gypsum Board shall be used in exit ways or other areas that require fire rated separation.
- .2 Plastic sheeting may be used only as a vapor, fine dust, or air infiltration barrier, and shall not be used to separate occupied spaces from construction areas.
- .3 A specific stairwell and/or elevator should be assigned for construction worker use during work hours. In general, workers may not use corridors, stairs, or elevators designated for Owner or Tenants.
- .4 Large amounts of debris must be removed by using enclosed chutes or a similar sealed system. There shall be no movement of debris through halls of occupied spaces of the building. No material shall be dropped or thrown outside the walls of the building.
- .5 All parts of the building affected by renovation activity shall be cleaned at the close of each workday.

§ 3.19.4 Fire and hazard prevention: Areas of buildings under construction that are to remain occupied shall maintain a Certificate of Occupancy.

§ 3.19.5 Noise abatement during construction:

- .1 Construction and maintenance operations shall not produce noise in excess of 60 dba in occupied spaces or shall be scheduled for times when the building is not occupied or acoustical abatement measures shall be taken.

§ 3.19.6 Control of airborne contaminants during construction:

- .1 Contractors shall be responsible for the control of the chemical fumes, gases, and other contaminants produced by their welding, gasoline or diesel engines, roofing, paving, painting, etc. to ensure they do not enter occupied portions of the building or air intakes.
- .2 Each Contractor shall be responsible to ensure that its activities and materials which result in off-gassing of volatile organic compounds such as glues, paints, furniture, carpeting, wall covering, drapery, etc. are scheduled, cured, or ventilated in accordance with manufacturer's recommendations before a space can be occupied.
- .3 Large and small asbestos abatement projects as defined by 12NYCRR56 shall not be performed in occupied areas of the building. Any area of the building where abatement of hazardous materials is being performed must be sealed off in an air-tight fashion from the remainder of the building in accordance with NY Code Rule 56 and other applicable laws and regulations.

§ 3.19.7 The requirements of Section 155 of the Regulations of the New York State Commissioner of Education apply to this Project. Refer to "NYSED UNIFORM SAFETY STANDARDS."

§ 3.20 CONTRACTOR'S RESPONSIBILITIES

Contractor agrees, in addition to all other responsibilities and duties under the Contract:

§ 3.20.1 To use all necessary means to discover and to notify the Architect and Owner in writing of any defect in other Work upon which the satisfactory performance of the Work may depend, and to allow a reasonable amount of time for remedying such defects. If Contractor should proceed with the Work, Contractor shall be considered to have accepted and be responsible for such other Work unless over Contractor's written objection, Contractor shall have proceeded pursuant to written instructions from the Architect.

§ 3.20.2 To submit to Owner and Architect promptly upon request, information with respect to the names, responsibilities and titles of the principal members of Contractor's staff.

§ 3.20.3 To take all steps necessary to avoid labor disputes

§ 3.20.4 To pay for costs of repair to other Work attributable, in whole or in part, to the fault or negligence of Contractor and Owner's charges for removal of rubbish attributed to Contractor, and any cleanup related to Contractor or the Work, as determined by Owner or Architect.

§ 3.20.5 To comply with all legal requirements; to appear at hearings, proceedings or in court in respect of such compliance or in respect of violations or claimed violations of legal requirements; to pay any fines or penalties imposed for said violations; and to pay all legal fees, fines and penalties incurred by or imposed upon Owner relating to Contractor's compliance, violations or claimed violations. Without limiting the foregoing, Contractor shall appear at hearings, proceedings and/or in court and consent to its substitution as a party defendant in respect of all summonses and claimed violations arising out of or relating to the Work.

§ 3.20.6 Not to display on or about the Project site any sign, trademark or other advertisement, without written consent of the Owner.

§ 3.20.7 That before any subcontractor or supplier is employed by Contractor, the name of such Subcontractor or supplier shall be submitted in writing to the Owner through the Architect, and no Subcontractor or supplier shall be employed unless acceptable to the Owner. Each Subcontractor and supplier shall be bound by all Contract Documents to the same extent and with the same effect as if the Subcontractor or supplier were the Contractor. Contractor shall cause Subcontractors and suppliers to comply with all the Contract Documents. Contractor shall be responsible for all the acts, work, material and equipment of its Subcontractors and supplier and all persons either directly or indirectly employed by any of them.

§ 3.20.8 That in the event of any dispute as to whether any item or portion of the Project is within the scope of the Work to be performed by Contractor or any dispute as to whether Contractor is entitled to an extra payment, Contractor shall continue to proceed diligently with the performance of the Work, the Contract, and the disputed Work. The resolution, by agreement or otherwise, of the disputed Work, shall be made between Contractor and Owner with reasonable promptness. In no event shall delay in such resolution excuse prompt performance by Contractor of the Work, the Contract and the disputed Work.

§ 3.20.9 To:

- .1 Furnish a competent and adequate staff and use its best skill and attention for the proper administration, coordination, supervision and superintendence of the Work;
- .2 Organize the procurement of all materials and equipment so that they will be available at the time needed for the Work;
- .3 Keep an adequate force of skilled workers on the job to complete the Work in strict accordance with all requirements of the Contract Documents;
- .4 Maintain throughout the duration of the Work a competent superintendent and any necessary assistants, all of whom shall be acceptable to Owner and shall not be changed without the consent of the Owner;
- .5 Enforce discipline and order among Contractor's employees and not to employ at the Project any unfit person or anyone not skilled in the task assigned; and
- .6 Provide supervision by experts in all aspects of the application of the materials, equipment or system being fabricated and installed.

§ 3.20.10 That if any Work is performed which is contrary to legal requirements, to promptly make all changes as required and take all other corrective action to comply therewith and pay all costs, including but not limited to any penalties, fines, or interest, arising from the Work performed contrary to legal requirements.

§ 3.20.11 That any review or consideration by Owner or Architect of any method of construction, invention, appliance, process, article, device or material of any kind shall be for its general adequacy for the Work and shall not be an approval for the use thereof by Contractor in violation of any patent or other rights of any third person. Owner and Architect shall in no event be deemed to have reviewed or to have been required to review or consider the means and methods of construction, all of which are chosen exclusively by the Contractor.

§ 3.20.12 That if any provision of the Contract Documents conflicts with any agreement among members of trade associations, or with a union or labor council which regulates the work to be performed by a particular trade, to reconcile such conflict without delay or damage to Owner. In the event the progress of the Work is delayed by such conflict, Architect may require that other material or equipment of equal or better kind and quality be provided at no additional cost to Owner. This right of substitution shall not limit other rights that Owner may have concerning such delay.

§ 3.20.13 In accordance with local or NY State Laws and Regulations, the Contractor, including any of its employees, subcontractors, suppliers or materialmen or other representatives, shall not use tobacco in any form on the premises during the course of the Work. Contractors failing to abide by this requirement shall be prohibited from working at the site and shall be responsible for any consequent delays or added costs to the Owner as a result of such noncompliance.

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

§ 3.20.15 The Contractor, its employees and Subcontractors and their employees shall be subject to and abide by rules and regulations established by the Owner. No weapons of any kind shall be permitted on site, there shall be no harassment of a sexual, ethnic or religious nature; there shall be no use of profanity.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.1.1 Architect's Consultants: The firms listed on the title sheet of the Specifications are Consultants employed by the Architect, and are agents of the Architect and will make observation of their respective branches of the Work. All changes in the Work must be processed through the Architect. Consultants shall not order extra Work or make changes in the Work. (See 7.2.1 and 7.4).

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

- .1 On the basis of on site observations and otherwise, the Architect shall keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.
- .2 The Architect will promptly report to the Owner any defects or deficiencies of the Work of the Contract which he may observe.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect 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

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect 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 to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and with reasonable promptness 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 the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. 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 review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

Init.

§ 4.2.12.1 If Work is described or indicated in a manner which makes it impossible to carry out the requirements of the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request interpretation before proceeding with the Work. If Contractor fails to make such a request, no excuse will be entertained for failure to carry out the Work of the Contract Documents. Should a conflict occur in or between Contract Documents, the Contractor is deemed to have estimated on the more expensive way of doing the Work.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect'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 will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 All written claims for damages or extra work shall include time of occurrence, location and other identifying factors and shall be supported if so required by Architect, by letters, journals, or diaries, instructions, vouchers, or other pertinent or applicable records.

§ 4.2.16 Owner shall not be liable to any Contractor or Subcontractor for damages caused by any breach of Contract, delay in performance or other act of neglect by other Contractors or Subcontractors having contracts for performance of any portion of Work.

ARTICLE 5 SUBCONTRACTORS – INTENTIONALL DELETED

(Paragraphs deleted)

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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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.

§ 6.1.3 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner 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

notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 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.

§ 6.2.6 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 as amended provided the separate contractor has reciprocal obligations.

§ 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 Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK – INTENTIONALLY DELETED

(Paragraphs deleted)

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

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

§ 8.2 Progress and Completion

(Paragraph deleted)

§ 8.2.1 TIME IS OF THE ESSENCE IN THE COMMENCEMENT, PROSECUTION AND CONSTRUCTION OF THE WORK. Contractor shall be responsible for all direct and consequential damages, limited to the contract sum identified in Exhibit B Item 1.1, to Owner and Architect arising from any delay of Contractor, its Subcontractors and suppliers, in performing or completing the Work in accordance with the time requirements of paragraph 8.2. The indemnity provisions of Articles 3 and 11 are applicable to such damages and to claims arising in respect thereto.

.1 Contractor shall cooperate with the Owner, Architect and other Contractors on the Project, making every reasonable effort to reduce the contract time.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

.1 Contractor shall not commence work on the site until two certified copies of all insurance policies as indicated in Article 11, attesting that the required coverage is in force, have been accepted by the Owner.

Init.

§ 8.2.3 Contractor shall do all things necessary to ensure the prosecution of the Work in accordance with any one or more of the following as determined by the Architect and the Owner, in their discretion:

- .1 Project schedules and revisions thereof, given from time to time by Contractor;
- .2 The time requirements for various portions of Work;
- .3 The requirements of the Project including, but not limited to, coordination requirements as may from time to time be known to Contractor;
- .4 Schedules of the Work provided by Contractor to Architect upon the Owner's request.

§ 8.2.4 If the Contractor does not achieve Substantial Completion within the Contract Time established in the Agreement between the Owner and the Contractor, or in a subsequent Change Order, the Contractor shall be liable to the Owner, in addition to any actual or consequential damages, limited to the contract sum identified In Exhibit B Item 1.1, for the costs of reimbursements to the Owner's Agents including, but not limited to, the Architect for their services attributable to this delay.

§ 8.2.5 Should the progress of the Work and/or other Work be delayed by any fault, neglect, act or failure to act of Contractor or any of its Subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to Owner or Architect or for which Owner or Architect may become liable, Contractor shall hold Owner and Architect harmless from and indemnify Owner and Architect against all such additional cost, expense liability or damage in accordance with the provisions of Article 11.

§ 8.2.6 The Work shall be performed during designated working hours, except that in the event of emergency or when necessary to perform the Work in accordance with the requirements of paragraph 8.2, Work shall be performed at Contractor's cost and expense on other shifts, overtime, Saturdays, Sundays, Holidays and at other times, if permission to do so has been obtained in writing from Owner. Without limiting the requirements of the preceding sentence, if the progress of the Work or of the Project has been delayed by any fault, neglect, act or failure to act of Contractor or any of its Subcontractors or suppliers, Contractor shall work such overtime, at Contractor's cost and expense as aforesaid, as Architect shall deem necessary or desirable to make up for all time lost and to avoid delay in the completion of the Work and of the Project. The failure by Architect to direct Contractor to engage in such overtime shall not relieve Contractor of the consequences of its delay.

§ 8.2.7 Unless otherwise noted, the date of commencement of the Work is the date established in the Contract. Contractor shall organize construction schedules as specified in paragraph 3.10, Contractor's Construction Schedules. The commencement date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

§ 8.2.8 The Architect may direct acceleration of the Work so that it may be performed in advance of the schedules, time requirements and Project requirements described in paragraph 8.2. If so directed, Contractor shall increase its staff and/or work overtime. Contractor will not be entitled to additional compensation for work performed outside of designated working hours, except as approved by Owner. Provided that Contractor is not in default under the Contract, and Owner has issued the aforesaid authorization, there shall be added to the Contract Sum as actual out-of-pocket amount equal to:

- .1 Additional premiums on wages actually paid, at rates that have been accepted by Architect;
- .2 Taxes imposed by law on such additional wages;
- .3 Premiums for worker's compensation and liability insurance if required to be paid on such additional wages.

§ 8.2.9 Written authorization for overtime work that exceeds \$500.00 for which Contractor intends to charge the Owner in any one week shall be invalid unless confirmed in writing by the Owner, it being understood that Owner's Site Representative shall not have authority to authorize such overtime which exceeds \$500.00 in any one week.

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

§ 8.2.11 Contractor and Contractor's Surety shall be strictly accountable for completion as a condition to satisfactory contractual performance.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 Should Contractor be obstructed or delayed in the commencement, prosecution or completion of the Work, without fault on its part, by reason of failure to act, direction, order, neglect, delay or default of the Owner or the Architect; by changes in the Work; fire, lightning, earthquake, enemy action, act of God or similar catastrophe; by Government restrictions with respect to materials or labor, or by an industry-wide strike beyond Contractor's reasonable control, then Contractor shall be entitled to an extension of time lost by reason of any and all causes aforesaid, but no claim for extension of time on account of delay shall be allowed unless a claim in writing therefore is presented to Architect with reasonable diligence but in any event not later than fifteen (15) days after the commencement of such claimed delay. Except for the causes specifically listed above in this subparagraph, no other cause or causes of delays shall give rise to an extension of time to perform the Work. The granting of an extension of time is conditioned upon Contractor's timely submission of the aforesaid written notice. Except to the extent, if any, expressly prohibited by law, Contractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased labor or material cost, on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated including but not limited to the aforesaid causes, and agrees that the sole right and remedy therefore shall be extension of time, provided the requisite condition as to written claim has been met.

§ 8.3.2 If Contractor claims an increase in the Contract Sum or an extension in the completion time required by reason of a change in the Work, Contractor shall give Architect written notice within fifteen (15) days after Contractor's knowledge of the occurrence of the matter giving rise to such claim. This notice shall be given by Contractor before proceeding to execute the changed Work, except in an emergency endangering life or property in which case Contractor shall proceed in accordance with paragraph 10.3. No such claim will be valid unless notice is given as required in this paragraph. Contractor shall proceed to execute the Work, even though the increase or time extension has not been agreed upon.

- .1 Extension of time, if requested by the Contractor, shall only be considered after the Contractor has made reasonable effort to recover the lost time.
- .2 An extension, or extensions, of time may be granted subject to the provisions of this article, but only after written application therefore by the Contractor in accordance with Article 15
- .3 An extension of time shall be only for the number of days of delay that the Architect may determine to be due solely to the causes set forth in the application for extension of time. The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently; but if at all, only the actual period of delay as determined by the Architect.

§ 8.3.3 Contractor shall not be allowed an extension of time unless Contractor has established to the satisfaction of the Owner and Architect that the delay claimed by Contractor is to a portion of the Work on the critical path of the work schedule.

§ 8.3.4 No monetary recovery may be obtained by Contractor for delay. Time extensions for delay are limited to the specific causes set forth in subparagraph 8.3.1 and, then, only upon compliance with the notice and proof requirements of subparagraph 8.3.1 and 8.3.2.

§ 8.3.5 Under no circumstances will Contractor look to or make a claim against Owner or Architect for the consequences of any delay resulting from directions given or not given by Architect including scheduling and coordination of the Work or resulting from Architect's preparation of Drawings and Specifications or review of Shop Drawings.

§ 8.3.6 When the Contract Time has been extended, as provided under this paragraph 8.3, such extension of time shall

not be considered as justification for extra compensation to the Contractor for administrative costs or other similar reasons.

§ 8.3.7 The intent of the Contract is for the Work to follow a logical sequence; however, the Contractor may be required by the Architect to temporarily omit or leave out any section of its work, or perform its work out of sequence. All such out-of-sequence work shall be performed at no additional cost to the Owner.

ARTICLE 9 PAYMENTS AND COMPLETION

(Paragraphs deleted)

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

§ 9.3.3.1 The Contractor shall keep the Owner and the Owner's property (including funds for payment under the Project) free from all liens, legal or equitable, arising out of Contractor's work hereunder. If any such lien is filed with the Owner by anyone claiming by, through or under the Contractor, the Contractor shall discharge the lien within 10 days of the filing thereof. The Contractor further expressly agrees to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against the Owner as a result of liens filed against payments due the Contractor or the Work, the site of any of the Work, the Project site and any improvements thereon or any portion of the property of the Owner. The Contractor hereby agrees to indemnify and hold the Owner 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. The Owner agrees to release any payments withheld as a result of a duly filed lien, upon compliance by the Contractor with the applicable discharge or vacatur provisions of the Lien Law.

§ 9.3.3.2 The Contractor warrants that title to all work covered by an Application for Payment will pass to the Owner either by incorporation into construction or no later than time of payment.

§ 9.3.3.3 The Contractor further warrants that upon submittal of an application for payment all Work for which Certificates of Payment have been previously issued and payments received from the Owner shall, to the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Every contractor and subcontractor shall submit to the Owner, within thirty (30) days after issuance of their first payroll and every thirty (30) days thereafter, a transcript of the original payroll record, as provided by the Labor Law, subscribed and affirmed as true under the penalties of perjury. Failure to do so shall be cause for the Owner to withhold payment until such records are received.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:14:53 ET on 12/04/2019 under Order No.7393968587 which expires on 09/08/2020, and is not for resale.

User Notes:

(842155886)

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect 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 opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may 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 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 suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .7 any other breach of this Agreement

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered so long as permitted by State Law. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 Within seven (7) calendar days of the receipt of a payment from the Owner, the Contractor shall pay each of his subcontractors and material men 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 the applicable retained percentage amount withheld from the Contractor. The Contractor shall not retain portions of proceeds owed the subcontractor and/or material men from the Owner's payment to the Contractor for the "contract balance". Similar provisions apply to the subcontractor and/or material men paying each of his subcontractors and material men.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.6.9 The Owner shall make no payment to the Contractor after the date set in the Contract for Substantial Completion (including authorized adjustments) until the actual date of Substantial Completion.

§ 9.7 Failure of Payment

If the Architect fails persistently to 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 fails persistently to pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon twenty-one (21) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

- .1 Substantial Completion shall not be deemed to be achieved until after the Contractor has submitted the Operations and Maintenance Manual or Manuals and provided all required training and orientation required by the Contract Documents and the manuals, training and orientation are deemed by the Architect as complete and in full compliance with the applicable obligations.

§ 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 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. The Contractor shall proceed promptly to complete and correct items on the list.

§ 9.8.3 Upon Substantial Completion of the entire work, the Contractor shall submit a requisition for the "contract balance". The Owner shall pay the remaining amount *less* the greater value of a lump sum of \$10,000 *OR* the sum of two times the value of any items to be completed plus an amount necessary to satisfy any outstanding claims, liens or judgments against the Contractor. Until all remaining items of work are satisfactorily completed or corrected, the Owner may hold all retainage, including monies for all "uncompleted" items, until all items are completed and close out submittals are complete.

- .1 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.
- .2 Where project includes Heating and/or Air Conditioning or other systems that are not put into operation at the time of occupancy, a sum shall be withheld until these systems have operated to the general satisfaction of the Architect. The retained amount shall approximate 5 percent of the cost of the systems as determined by the cost breakdown submitted. The guaranty-warranty period for such systems will not commence until after such Architect approval.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect 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 by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion or this Agreement (see, for example, subparagraph 9.8.3.2).

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

§ 9.8.6 Except on projects where there is no Performance Bond required, the Contractor's requests for reduction of retainages shall be accompanied by a properly executed copy of the "Consent of Surety to Reduction in or Partial Release of Retainage" AIA Document G707A. The Contractor shall cooperate with the Architect, Owner and Surety in establishing the correctness of his requests. Such requests shall be made in ample time as all necessary approvals must be secured before requests can be considered.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor 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.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used. The Contractor will provide the Owner and Architect with photographs documenting the condition of the space to be occupied. The photographs must be dated and supplied within three (3) business days of the inspection. Any subsequent damage to the space which cannot be confirmed by the Contractor's photographs (as occurring as a result of the Owner's occupancy) will be repaired by the Contractor at no additional cost to the Owner.

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

Init.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect'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.

- .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 Architect at his discretion.
- .2 If the Architect is required to perform additional inspections subsequent to the "final inspection" because the Work fails to comply with the requirements of the Contract, the amount of compensation paid to the Architect by the Owner for additional services shall be deducted from the final payment to the Contractor.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) other data establishing payment or satisfaction of obligations, such as affidavits, 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. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Upon demand by the Owner, Contractor shall provide and file bond for discharge of any lien, as required by Lien Law, State of New York, Section 21, Paragraph 5.

- .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 Architect at his discretion.
- .2 If the Architect is required to perform additional inspections subsequent to the "final inspection" because the Work fails to comply with the requirements of the Contract, the amount of compensation paid to the Architect by the Owner for additional services shall be deducted from the final payment to the Contractor.

§ 9.10.3 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 so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

- .5 Costs, loss or damages sustained, either prior to or subsequent to such payment, as a result of any breach of the Contract, or any wrongful act or omission of the Contractor or any subcontractor.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.1.2 The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and the 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.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; 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 the existing building and premises in the vicinity of, or affected by, the Contractor's operations including but not limited to:
 - a. 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.
 - b. 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.
 - c. Materials shall not be stored in an unsafe or obstructive manner about the site, or in the building, but shall be carefully stored in areas that will not interfere with pedestrian traffic or with access to and egress from adjacent properties and use of the building.
 - d. The Contractor shall provide and maintain such temporary work as may be required for the protection of his finished work where liable to injury.
 - e. The Contractor will be responsible for all of his 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 and shall make good any such damage or loss without expense to the Owner.
 - f. The Contractor shall not permit unnecessary hazards to be created or permit them to continue if they are discovered.
 - g. The 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 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.

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

- .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 Contractors' Work and operations; protect from damage adjacent or adjoining work and /or structures (new or existing); and, protect from damage adjacent or adjoining property.

§ 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. In such event the Contractor shall give the Owner and the Architect reasonable advance notice.

- .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 New York State, and those of OSHA and of 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 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect 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.

§ 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.

§ 10.2.7 Contractor shall not load or permit any part of the existing structure or any part of the Work to be loaded with materials, equipment, shores, bracing, etc., which in any way can endanger or cause damage to same or to other Work or endanger persons in or about the Work.

§ 10.2.8 Injury or Damage to Person or Property

§ 10.2.8.1 If the Contractor suffers injury or damage to persons or property because of an act or omission of the Owner or of any of the Owner's employees or agents or of any others for whose acts the Owner is legally responsible, the Contractor shall give written notice thereof to the Owner and the Architect within a reasonable time not exceeding 7 days after first observance. The notice shall provide sufficient detail to enable the Owner to investigate the matter. If a Claim for additional cost or additional time is related to this Claim, it shall be made in accordance with the provisions of Article 15.

§ 10.2.8.2 Notice to the Contractor by the Owner, Architect or Owner's Representative of a Claim in the course of a Project Meeting shall be sufficient notice of a Claim of injury or damage to person or property to meet the requirements of Article 15.

§ 10.2.8.3 **Glass Breakage:** The Contractor shall be responsible for all breakage of glass, which has been furnished and installed as part of its Contract and any existing glass that is broken due to operations of the Contract for the Work.

Init.

No matter by whom or what cause the glass was broken, it shall replace all broken glass before the completion and acceptance of the Work. It may claim damages as provided for in Article 15, if applicable.

§ 10.2.9 RESTORATION

§ 10.2.9.1 If during the construction, public or private property is damaged or destroyed, during the course of his work, the Contractor responsible shall, at its own expense, restore such property to a condition equal to that existing before such damage or injury was done, by cleaning up, repairing, rebuilding or replacing it, or otherwise making good such damage or destruction in an acceptable manner.

§ 10.2.10 O.S.H.A.

In addition to all requirements set forth herein the Contractor and subcontractors who perform any work under this Contract will fully comply with the provisions of the Federal Occupational Safety and Health Act of 1970 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 Architect and 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.

§ 10.2.11 WELDING

- .1. All welding shall be done in accordance with the American Welding Society Code for Arc Welding Society, certified for current year.
- .2. When cutting or welding is to be done, the Owner MUST be notified prior to start. In addition, the Contractor for the Work, shall provide a fire guard with proper fire extinguisher for duration of cutting and welding work.
- .3. A welding curtain is to be installed around 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 expressed permission of the Owner.
- .4. Obtain Owner's permission for each location in existing building where welding is required. Owner's stipulated requirements shall be adhered to.

§ 10.2.12 OPEN BURNING

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

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

§ 10.2.14 The Contractor shall promptly report, in writing, to the Architect and the Owner all accidents arising out of or in connection with the work that causes property damage, personal injury or death giving full details and statements of any witnesses. In addition, if death, serious personal injury or serious property damage is caused the accident shall be reported immediately by telephone or messenger to the above parties.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor 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.

Init.

When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6

§ 10.4 Emergencies

In an emergency affecting life, the Work, or the Owner, or Owner's property, Contractor, without special instructions or authorization from Architect, shall take the action necessary to deal adequately with such emergency. Written notice of any such action shall be given by Contractor to Architect and Owner as soon as is practicable, but not later than 7 days following the occurrence.

§ 10.5 LEAD-BASED PAINT

In the event Contractor, in the course of work or otherwise, encounters material reasonably believed to be or assumed to be lead-based paint, Contractor shall follow *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, June 1995, known as the "HUD guidelines", and EPA requirements, including the Lead Abatement Report.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 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 or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, 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.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that 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. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall maintain the following insurance for the duration of this Agreement and shall maintain Products and Completed Operations insurance coverage in effect for a period of two (2) years after Final Completion of the Work to be performed under the Contract Documents.

§11.1.4.1 Comprehensive General Liability Insurance naming the Owner, Architect and Construction Manager as an Additional Insured on a primary and a non-contributory basis, containing an Additional Insured Endorsement, and a Waiver of Subrogation Endorsement:

General Aggregate	\$2,000,000
Products Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000

Including Bodily Injury and Property Damage, Damage for Premises/Operations, Products and Completed Operations and coverage provided by the General Liability coverage form CG00010 1/96 in connection with work to be completed by the Contractor and all subcontractors and consultants, with the Owner, Architect and Construction Manager named as an Additional Insured. Coverage must be provided on a per project basis.

All property damage insurance shall include coverage for explosion, collapse and underground operations.

§11.1.4.2 Commercial Automobile Liability Insurance covering owned and rented vehicles operated by the Contractor with policy limits of not less than one million (\$1,000,000) combined single limit and aggregate for bodily injury and property damage. Including Bodily Injury and Property Damage for the operation of Any Auto (Symbol 1) used in connection with Work to be completed by the Contractor and all subcontractors and consultants, with the Owner, Architect, and Construction Manager named as an Additional Insureds with Endorsement attached.

§11.1.4.3 Umbrella Liability Insurance:

Each Occurrence Limit	\$5,000,000
Aggregate	\$5,000,000

The Umbrella Liability Insurance coverage shall provide additional limits of liability over and above the General Liability and Automobile Liability coverages required by this Agreement.

§11.1.4.4 Worker's Compensation Insurance covering the obligations of the Contractor in accordance with applicable law at statutory limits and Employer's Liability Insurance with a policy limit of not less than required by applicable law, covering all operations under this Agreement, whether performed by the Contractor, its subcontractors or consultants.

§11.1.4.5 Owner's Protective Liability Insurance with the Owner listed as the Named Insured:

Each Occurrence	\$1,000,000
Aggregate	\$2,000,000

(Paragraphs deleted)

§11.1.4.6 The Contractor shall provide to the Owner for each of the insurance coverages required herein one original or one certified copy of the original policy of insurance, including all endorsements, plus one certificate of insurance, with a brief description of the project or service. The policies and certificates shall show the Owner, the Architect, and the Construction Manager as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies, and the Owner as the Named Insured on the Owner's Protective Liability Insurance policy. All such insurance shall be written without expense to the Owner by an insurance company authorized to provide insurance in the State of New York, shall be drawn on standard forms approved by the New York State Insurance Department and shall protect the Contractor, its subcontractors and consultants, and the Owner, the Architect and the Construction Manager from liability for claims for personal injury, death and property damage which may arise from performance under this Agreement.

(Paragraph deleted)

§11.1.4.7.1 The issuing insurance company, agents and/or authorized representatives shall set forth in writing that there are no pending claims against the insured and/or that there is ample coverage remaining to cover the insured in the event of a claim.

§11.1.4.7.2 The issuing insurance company, agents and/or authorized representatives shall set forth in writing that the insurance: (1) applies to all operations of the Contractor in connection with the Work to be performed under this Agreement; (2) applies on the effective dates stated, whether or not the Agreement between the Contractor and the Owner has been executed; and (3) is written in accordance with the company's regular policies and endorsements.

(Paragraphs deleted)

§11.1.4.7.3 Each policy must provide the Owner thirty (30) days advance written notice prior to cancellation and/or non-renewal of the policy.

§ 11.2 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's liability insurance in such types of coverage and in such amounts as it deems necessary.

§ 11.4 Performance Bond and Payment Bond

(Paragraphs deleted)

§ 11.4.1 The Contractor must furnish two executed Surety bonds, each in the amount equal to one hundred (100) percent of the Contract Sum.

§11.4.1.1 The Performance Bond shall be furnished as security for the faithful performance by the Contractor off all terms and conditions of the Contract Documents.

§11.4.1.2 The Labor and Material Payment Bond shall be furnished as security for the claims of laborers and materials suppliers.

§11.4.1.3 Both bonds shall be made out to the Owner, prepared and submitted by the Contractor to the Owner within ten (10) days of notification that its Bid was awarded. Each bond must be effective as of the date of the Agreement, properly completed, signed by the Contractor and the Surety with their signatures acknowledged by a notary.

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

§11.4.1.5 All Bonds shall be maintained in full force for a period of twelve (12) months after the date of the Contractor's acceptance of final payment as guarantee that the Contractor will make good any faults or defects in the work arising from improper or defective workmanship or materials which may appear during the period.

§11.4.1.6 Every Bond under this Paragraph 11.4.1 must display the Surety's Bond Number.

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

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

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

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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect'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 not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition.

During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. *Exception:* Any correction made under this 12.2.2 or under any other guarantee or warranty required by or included in the Contract Documents shall likewise be subject to correction at Contractor's own expense if it is found not to be in accordance with the Contract Documents within one year after the date that such correction is accepted by the Owner.

§ 12.2.2.4 The guaranty-warranty required by subparagraph 12.2.2 shall be written in a form acceptable to the Owner, properly sworn to and signed by a responsible officer of the Contractor's firm.

§ 12.2.2.5 The Performance and Payment Bonds shall remain in effect and full force through this period.

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

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

§ 12.3 Acceptance of Nonconforming Work

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

§ 12.3.2 The Owner, with the advice of the Architect, shall determine the adjustment to the Contract Sum. The Contractor shall bear all direct, indirect and consequential costs attributable to the evaluation of and decision to accept such defective Work. Such costs for the efforts of the Architect (at their current billing rates) and any other costs to the Owner will be charged to the Contractor through Change Order procedures.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of New York without regard to conflict of law principles.

§ 13.2 Successors and Assigns

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

§ 13.2.2 After Final Completion of the construction under this Agreement, the Contractor may assign this Contract as a whole without Owner's consent, to an entity that acquires 100% of the ownership of Contractor through acquisition, merger, or consolidation, upon thirty days prior written notice to Owner and reasonably acceptable written acceptance of all remaining obligations, including but not limited to any warranties or guaranties of Contractor under this Agreement, by the acquiring entity.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due in accordance with New York State Law.

§ 13.6 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the Agreement within the time period specified by applicable law. The Contractor waives all claims and causes of action not commenced in accordance with this Section 13.6.

Init.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fifteen (15) days' written notice to the Owner and Architect and upon the failure of the Owner to cure the alleged grounds for termination within the said fifteen (15) day period, terminate the Contract and recover from the Owner payment for Work completed up to the date of termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, 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 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 is more than 15 percent behind schedule on a particular construction milestone, phase or overall project schedule, as determined jointly by the Architect and the Owner. This percentage will be calculated by dividing the number of days the Contractor is behind schedule by the total number of days allotted in the schedule for the construction milestone, phase or overall project schedule;
- .6 refuses or neglects to supply a sufficient quantity of materials or labor required to perform the Work according to accepted schedules;
- .7 fails to prosecute the Work with diligence and promptness;
- .8 files for bankruptcy or other debtor insolvency relief;
- .9 an act of omission by the Contractor that stops, delays, interferes with or damages the Work;
- .10 any other failure by the Contractor to perform any other terms and conditions of their Contract;
- .11 a determination by the Architect that the Work or any portion of the Work is not being performed in accordance with the Contract;
- .12 fails to comply with a construction change directive; or
- .13 disregards the authority of the Owner.

§ 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, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice or three days' written notice

if the number of days between the date of commencement and date of Substantial Completion, including both those days, is thirty days or less, 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 Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work completed up to the date of termination.

§ 14.5 USE OR OCCUPANCY OF BUILDING BY OWNER

§ 14.5.1 The Contractor shall cooperate with the Owner in order to make portions of the Project available for Owner's use as soon as possible.

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

§ 14.5.3 Should there be, in the opinion of the Architect, unwarranted delay on the part of the Contractor in completion of uncompleted work or other Contractor requirements, the Owner may have full or partial use and occupancy of any or all portions of buildings as required for moving in or installing furniture, fixtures, supplies or equipment and for general cleaning and maintenance work. In such event Contractor whose unfinished work is performed subsequently shall be responsible for the prevention of any damage to such Owner's installation. Such use or occupancy by the Owner shall in no instance constitute acceptance of any of the Work.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law.

(Paragraphs deleted)

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.7 Limitation and Waiver of Money Damages

Notwithstanding anything else set forth in the Contract Documents or otherwise, 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, impacts on schedule, schedule acceleration, schedule compression or by any breach of contract, delay in performance or other act of neglect by other Contractors or Subcontractors having Contracts for performance of any portion of Work. Except to the extent, if any, expressly prohibited by law the Contractor agrees not to make any claim for such damages. 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. The Contractor understands that it hereby agrees not to make, and hereby waives, any claim for damages for delay from any cause whatsoever, including but not limited to, those resulting from increased labor or material costs; schedule acceleration, schedule compression, directions given or not given by the Owner or Architect, including but not limited to scheduling and coordination of the Work; the Architect's preparation of drawings and Specifications; the Architect's review of shop drawings and requests for instruction(s); or on account of any delay, obstruction or hindrance for any other cause whatsoever by the Owner, Architect or any other contractor on the project whether or not foreseeable or anticipated. The Contractor agrees that no monetary recovery may be obtained by the Contractor for any of the foregoing against the Owner or the Architect based upon any reason, and it is emphasized that the Contractor's sole remedy for any of the foregoing shall be an extension of time, if appropriate. The contractor further acknowledges and agrees that the failure to submit the schedule and updates to the schedule of its work as required by Contract or as requested by the Architect constitutes a waiver of any claim of damages based upon schedule acceleration, schedule compression or any other type of delay claims.

§ 15.3 Mediation

If a dispute arises out of or related to this Agreement or its breach, the parties shall endeavor to settle the dispute by mediation. Choice of the mediator shall be at the discretion of the Owner. The location of the mediation shall be the location of the Project. Once a party files a request for mediation with the other party and with the American Arbitration Association or other service, the parties agree to conclude such mediation within thirty (30) days of filing the request. Costs shall be borne equally by the parties. Each party shall have in attendance at any such mediation session a person with sufficient authority to resolve any dispute or settle any claim mediated.

(Paragraphs deleted)

§ 15.4 Litigation

Claims that have not been satisfactorily resolved by other means shall be subject to litigation in accordance with New York State law without regard to conflict of law principles. The Contractor shall comply with any applicable statutory requirements regarding Notice of Claim and with any applicable Statute of Limitations provisions. In the event the Contractor serves a Notice of Claim to the Owner, the Owner may, as a condition precedent to litigation, require the

Init.

Contractor to submit to an examination under oath by an attorney or other representative of the Owner, and to provide documentary evidence reasonably requested in connection with the examination. The venue of any litigation shall be New York State Supreme Court in the county in which the Project is located. The prevailing party as determined by the adjudicator of the litigation shall be entitled to reasonable attorneys' fees and necessary disbursements.

§ ARTICLE 16 PROVISIONS REQUIRED BY LAW

§ 16.1 PROVISIONS DEEMED INSERTED

§ 16.1.1 Each and every provision required by law to be inserted in the Contract, including but not limited to the provisions of New York State Education Law and Energy Law, shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and in the event any such provision is not inserted or is not correctly inserted then, upon the application of either party, this Contract shall forthwith be physically amended to make such insertion or correction.

§ 16.2 HOURS AND WAGES

§ 16.2.1 No laborer, workman, or mechanic in the employ of a Contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) days in any one (1) week except in cases of extraordinary emergency set forth in the Labor Law.

§ 16.2.2 The wages (including supplements) paid for a legal days work shall not be less than the prevailing rate of wages (including supplements) as defined by law.

§ 16.3 MINIMUM RATE OF WAGE AND SUPPLEMENT

§ 16.3.1 The minimum hourly wage rates (including supplements) to be paid shall not be less than that designated by the New York State Department of Labor, Bureau of Public Works and any redetermination of the prevailing rate of wages after the Contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these Contract Documents.

§ 16.3.2 The minimum hourly supplement to be paid shall be in accordance with the prevailing practices in the locality where the work is located and shall be not less than that designated by the Industrial Commissioner. Supplements as defined in Section 220 of the Labor Law, as amended, means all remuneration for employees paid in any medium other than cash or reimbursements for expenses or any payments which are not wages within the meaning of the law, including, but not limited to, health, welfare, nonoccupational disability, retirement, vacation benefits, holiday pay and life insurance.

§ 16.3.3 The Contract shall be forfeited by a Contractor and he shall not be entitled to receive any sum of money for any work performed hereunder on his second conviction for willfully paying less than the stipulated wage scale (including supplements) as provided in the Labor Law, Section 220, as amended, or the stipulated minimum hourly wage scale (including supplements) as provided in the Labor Law, Section 220-d, as amended.

§ 16.3.4 Prevailing Wage Rate Schedule shall be submitted by Addendum or otherwise to all Contractors, unless included in this General Conditions.

§ 16.4 APPRENTICES

§ 16.4.1 Apprentices must be registered, individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his work force on any job under the registered program. Any employee who is not registered as above, shall be paid the prevailing wage rate for the classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates for the area of construction, prior to using any apprentices on the contract work. (See Section 220.3-e).

§ 16.5 NON-DISCRIMINATION IN EMPLOYMENT

§ 16.5.1 Each Prime Contractor agrees, in accordance with the applicable provisions of the Labor Law of the State of New York, to the following:

- .1 That in the hiring of employees for the performance of work under this contract or any subcontract

Init.

hereunder no Contractor, subcontractor nor any person acting on behalf of such Contractor or subcontractor, shall by reason of religion, sex, age, color 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 That no Contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of religion, sex, age, race, color or national origin.
- .3 That there may be deducted from the amount payable to a Contractor by the Owner under this Contract, a penalty of fifty dollars (\$50.00) for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract.
- .4 That this Contract may be cancelled or terminated by the Owner and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violations of the terms of conditions of this Section of the Contract.

§ 16.5.2 The aforesaid provisions of this section covering every contract for or on behalf of the Owner for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

§ 16.6 DUST HAZARDS

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

§ 16.6.2 The Contract shall be void and of no effect unless the (each) Contractor complies with the provisions of this subdivision of the Contract.

§ 16.7 WORKER'S COMPENSATION INSURANCE

§ 16.7.1 This Contract shall be void and of no effect unless the person or corporation making or performing such contract shall secure compensation for the benefit of, and keep insured during the life of the contract, such employees, in compliance with the provisions of the workmen's compensation law.

§ 16.8 ASSIGNMENT OF PUBLIC CONTRACTS

§ 16.8.1 Except as set forth in §13.2.2, as provided in Section 109 of the General Municipal Law, the Contractor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the same, or of his right title, or interest therein, or his power to execute such contract or any other person or corporation without the previous consent in writing of the officer, board or agency awarding the contract. If any contractor, to whom any contract is let, granted and awarded, as required by law, by any officer, board or agency in a political subdivision, or of any district therein, shall without the previous written consent specified in subdivision one of this section, assign, transfer, convey, sublet or otherwise dispose of such contract, or his right, title or interest therein, or his power to execute such contract, to any other person or corporation, the officer, board or agency which let, made, granted, or awarded such contract shall revoke and annul such contract, and the political subdivision or district therein, as the case may be, and such officer, board or agency shall be relieved and discharged from any and all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his assignees, transferees or sublessees shall forfeit and lose all moneys, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent, or affect an assignment by any such contractor for the benefit of his creditors made pursuant to the laws of this state.

§ 16.9 FINGERPRINTING

- 16.9.1 Pursuant to the Safe Schools Against Violence in Education Act ("SAVE" legislation) and Part 87 of the Regulations of the Commissioner of Education, any individual who, as a result of their work on this capital project, will move (or migrate) in and out of student occupied areas for more than five (5) days a year, must be fingerprinted. All contractors shall be responsible to ensure that they (and their employees) are in full compliance with the fingerprinting provisions of New York's SAVE

Legislation and Part 87 of the Regulations of the Commissioner of Education at their sole cost and expense.

§16.10 SAVING CLAUSE

If, during the term of the Contract, it is found that a specific clause of the Contract is illegal under Federal or State law, the remainder of the Contract not affected by such a ruling shall remain in full force and effect.

END OF DOCUMENT



OWNER (Signature)

Michael K. Ginalski

(Printed name and title)

2-13-2020

(Date signed)



CONTRACTOR (Signature)

Steve Henslip - Energy Sucs. Mgr.

(Printed name and title)

2/14/20

(Date signed)

Init.

Article 1: Scope of Work

- 1.1. Description: Except as otherwise expressly provided herein, DAY AUTOMATION shall provide the work described herein necessary for:

For work to be submitted to NYSED and as designed by the Architect designated for the following buildings:

Building
High School
Middle School
Administration Building
Bus Garage
Gregg Elementary
Stadium

1.2. Specific Elements: The Work shall include the following:

1.2.1

LED Lighting Upgrade

Scope of work:

Lighting will be addressed in the following buildings in Phase 1 of this EPC:

1. CPP High School
 2. CPP Middle School
 3. CPP Administration building
 4. CPP Bus Garage
 5. CPP Stadium
- Hubbell NX controls will be interfaced to the lighting fixtures
 - Existing Bluetooth controlled fixtures will be connected to the server based system via Bluetooth to wired accumulators to be installed under this scope of work.
 - New fixtures will be wired directly to the NX server system. Hubbell fixtures have been used in the previous capital projects so the new fixtures to be provided under this project will be selected to match existing upgraded fixtures. This will minimize spare parts inventory and maximize reliability.
 - New Hubbell NX controls to be installed under this project will interface with existing upgraded fixtures and lighting control system including:
 - Occupancy sensing
 - Daylight harvesting
 - Dimming
 - Preset scenes on wall switch
 - Remote capability via PC
 - All outdoor fixtures not already upgraded to LED will be upgraded
 - New outdoor fixtures will be selected to match existing upgraded fixtures
 - The MS parking lot across Victory Blvd will get two (2) additional pole fixtures to improve light quality/coverage and security
 - Upgraded existing controls will be recommissioned as necessary to ensure all lighting is operating as intended and integrated into the networked controls
 - Screw-in and plug-in incandescent and compact fluorescent bulbs CFLs will also be replaced with LED equivalent replacement bulbs
 - Special needs classrooms will be identified for specialized dimming controls and color tuning with new LED lighting to easily allow light level adjustments to accommodate students requiring different

light levels. This lighting has been included for five (5) classrooms in the MS and eleven (11) classrooms in the HS

Building	Area	Existing Quantity Of Fixtures
MS	15:1 Spec. Ed B119	6
MS	15:1 Spec. Ed B119	1
MS	8th Grade Special Ed B233	6
MS	8th Grade Special Ed B233	1
MS	15:1 Special Ed B213	9
HS	6:1:1 Spec Ed A112	9
HS	6:1:1 Spec Ed A110	9
HS	15:1 Special Ed A108	12
HS	12:1:1 Spec Ed A109	13
HS	504 IST Special Ed E120	6
HS	Virtual Learning E119	4
HS	15:1 Special Ed E129	6
HS	15:1 Special Ed E129	2
HS	SP Ed Resource E110	6
HS	15:1 Special Ed A202	12
HS	Business Center Ed A204	12

-
- Select outside fixtures, as indicated on the design documents, will have motion sensing and dimming capability for enhanced security and energy efficiency.
- Building Security Lock down lighting interface will be provided to initiate the hallway and designated spaces security lighting scene in the event of building lockdown. This consists of designated fixtures with light grouping control on or off as required. Detailed lockdown integrated control scenes will be provided as further detailed in the project plans and specifications
- HS Stadium lighting upgraded to LED – The existing metal halide field lights will be removed and replaced with LED fixtures. Lights will be installed, tested and aimed to ensure proper field (and track) light conditions. Poles will be evaluated for suitability for this upgrade. Drivers for the LED lighting will be located near ground level for ease of maintenance.
- Corridor lighting systems /Security lighting – Occupancy sensing and control will be provided to shut off corridor lights when unoccupied and will also include time of day and occupancy control. Controls to allow global commanding of corridor lights on if needed will also be provided. Hallway lighting will be integrated into the Day Automation security system and a Lock Down control procedure enabled as described above.
- Stadium lighting shall be upgraded with a Musco outdoor lighting system
 - New LEDs will replace the field lights and the seating area lights
 - New control system shall allow access from a local control pad or phone app and have 6 pre-programmed scenes

Building Automation Controls

1.2.2 Building Controls Upgrade

Location: All school buildings

Day Automation will replace the existing Delta Controls and pneumatic systems with EcoStruxure and replace control panels, terminal device operators and wiring as necessary to make the system fully operational. The Continuum system at the HS and MS will be upgraded to EcoStruxure to ensure all buildings can be monitored and controlled from the same single system.

- Corning-Painted Post Schools building controls conversion includes:
 - A new front end with 2 PC's to be installed at a location designated by the OWNER
 - Equipment to be converted to EcoStruxure DDC controls as included on the project design documents.

Unit Type
AS-P Control Panel
Boilers
Pumps - Delta Controlled Currently
Replace Pneumatic Valve with Pumps
ERV - Delta Controlled
AHU Standard - Delta Controlled
AHU Standard - Pneumatic Controlled
VAVs - Delta Controlled
Hot/Cold Deck Dual Duct Box
Unit Ventilator - Delta Controlled
Radiation (Associated w/ UV) - Delta Controlled
DX Cooling (Associated w/ UV) - Delta Controlled
Unit Ventilator - Pneumatic Controlled
DX Cooling (Associated w/ UV) - Pneumatic Controlled
Fan Coil Unit - Delta Controlled
Radiation Zones - Pneumatic Controlled
Reheat Coils - Delta Controlled
Reheat Coils - Pneumatic Controlled
Cabinet Unit Heaters - Delta Controlled
Unit Heaters - Pneumatic Controlled
Unit Heaters - Delta Controlled
Exhaust Fans w/ADD - Delta Controlled
Exhaust Fans w/AAD - Local Controlled
Exhaust Fans w/AAD & w/VSD - Delta Controlled
Gravity Relief Ventilators
Lighting Point - Delta Controlled
Replace Pneumatic Valve controlled by Day

1.2.2.1

Demand controlled ventilation

Scope of work:

The air handling units listed in the table below will be controlled using a demand controlled ventilation sequence:

Building	AHU ID	Service	Total CFM	Existing average OA CFM	Min OA CFM from schedules	Heating coil MBH	Cooling coil MBH	# of CO2 sensor
HS	AHU-1&2	HS gym	22500	13000	21250	2072	1140	4
HS	AHU-3	HS aux gym	7500	4500	6325	683	374	4
HS	AHU-8	Auditorium	26000	11200	18900	1691	1200	4
HS	AHU-7	Cafeteria	11200	7560	9200	1002	555	4
HS	AHU-6	Gym wing lobby	6300	1800	2300	321	248	2
HS	AHU-12	Band C207	3200	790	855	170	134	2
HS	AHU-13	Instr. Music C203	3200	750	855	170	134	2
HS	AHU-14	Vocal music C206	3000	650	720	153	122	2
MS	Gym	Gym	20000	4250	4000	1080		4
MS	Aux gym AHU	MS aux gym	10000	2400	2800	471.8		4
MS	AHU-8	Auditorium	12000	2050	2400	583	480	4
MS	AHU-7	Cafeteria	8460	3100	3580	625.7	408.4	4
MS	AHU-6	Gym balcony and bleacher	10000	1800	2000	972	0	2

- CO2 sensors will be installed in the spaces listed above
 - The number of sensors has been approximated based on space size and use
- The DCV sequence shall control outside air dampers based on CO2 levels in the space
 - The sensor with the highest reading shall be used as the reference
 - Space CO2 setpoint shall be 700ppm

1.2.2.2

Optimum start sequencing

Scope of work:

The following controlled areas shall have the start/stop programming modified to enable optimum start, please note the new occupied times for the programming:

Building	AHU ID	Service	Space occupied heating setpoint	Space unoccupied heating setpoint	Existing		Proposed	
					Start time	Stop time	Actual occupied time	Unoccupied time
MS	MS	Classroom UVs	71	60	0:00	24:00	6:30	17:30
MS	MS	Classroom FCUs	71	60	0:00	24:00	6:30	17:30
MS	MS	Classroom BCUs	71	60	0:00	24:00	6:30	17:30
HS	HS	Classroom UVs	71	60	0:00	24:00	7:15	17:30
HS	HS	Classroom FCUs	71	60	0:00	24:00	7:15	17:30
HS	HS	Classroom BCUs	71	60	0:00	24:00	7:15	17:30

1.2.2.3

Equipment runtime reduction

Much of the larger HVAC equipment in the district operates extended hours due to inadequate temperature controls which requires very early startup or continuous operation to ensure space comfort and rediness.

Day Automation will modify and add controls, for equipment with excessive runtimes, via the new EcoStruxure system. This equipment will have start times approximately 1 hour before occupancy (adjustable) and run to the end of occupied hours. It is further recommended to implement a District temperature control policy to create a consistent temperature throughout the facilities to improve building comfort and efficiency. This would allow students and staff to work together to create an improved building environment.

- Note that NYSED requires indoor air temperatures at 68-72degF during heating season and 70-78degF during cooling season
 - Manual of Planning Standards page 45
- Reducing temperatures and maintaining even temperatures aids in energy use reduction
- Even temperatures throughout the building(s) reduce personnel temperature sensitivity because they are not moving through temperature gradients within the building.

Scope of work:

- The equipment in the table below shall have the operating schedules adjusted such that the associated HVAC equipment will run in occupied mode during the occupied hours.
- During unoccupied hours the associated HVAC equipment will be off except to maintain the night setback temperature associated with that space.
- HVAC equipment operating during unoccupied hours shall run with the outside air dampers closed.

Building	AHU ID	Service	Scheduled occupied time	Scheduled unoccupied time
MS	Gym	Gym	6:30	17:30
MS	AHU-4	MS aux gym	6:30	17:30
MS	AHU-8	Auditorium	6:30	17:30
MS	AHU-7	Cafeteria	6:30	17:30
MS	AHU-6	Gym balcony and bleacher	6:30	17:30
HS	AHU-1&2	HS gym	7:00	22:30
HS	ERV 1,2,3	Areas H, G, I	7:00	22:30
HS	AHU-3	HS aux gym	7:00	22:30
HS	AHU-8	Auditorium	6:30	22:30
HS	AHU-7	Cafeteria	6:30	22:30
HS	AHU-6	Gym wing lobby	7:00	22:30
HS	AHU-1	Library	7:15	17:30
HS	AHU-12	Band C207	7:15	17:30
HS	AHU-13	Instr. Music C203	7:15	17:30
HS	AHU-14	Vocal music C206	7:15	17:30

1.2.2.4

Middle School boiler room pump parallel operation

Day Automation will add controls to allow the 12 pumps shown in the table below (1A&B, 2A&B, 3A&B, 4A&B, 5A&B, 6A&B) run in parallel operation. By operating in parallel, the pumps can run at ½ the speed required of one pump resulting in using approximately 1/8 of the electrical energy.

Scope of work:

- Add pump controls as follows
 - The pump pairs will be sequenced to operate in parallel when possible. This allows the pump pair to deliver the same gpm and ft-hd at a lower combined kW.
 - Pump pairs will operate in parallel to a minimum of 30% speed, if pump speed in parallel is required to drop below this number then the pumps will switch back to single operation
 - There shall be a 5% deadband to switch between parallel and single operation

Unit #	GPM	Head Ft	RPM	Motor HP	Volts	Phase	VFD	Service
P-1 A&B	1300	60	1750	40	200	3	Y	Primary circulating loop
P-2 A&B	115	50	1750	5	200	3	Y	Secondary heating loop
P-3 A&B	60	40	1750	1.5	200	3	Y	Secondary heating loop
P-4 A&B	60	45	1750	1.5	200	3	Y	Secondary heating loop
P-5 A&B	174	75	1750	7.5	200	3	Y	Secondary heating loop
P-6 A&B	244	100	1750	15	200	3	Y	Secondary heating loop

**1.2.2.5
 Metering and Reporting**

Day Automation will install energy meters, or connect to existing meters where capability exists, for the HS, MS, Admin, Stadium and Bus Garage buildings. Metering electric and gas meters will enable the reporting capability of EcoStruxure and Energy Expert to display energy usage in daily/monthly/annual formats.

Energy Expert is an embedded power management module for EcoStruxure building management system. It provides electrical systems management, power monitoring, and energy accounting capabilities that enable facility and building operators to monitor and manage non-critical electrical network applications from a single view.

- Comprehensive and real time energy usage reports
- Simple, attractive, configurable dashboards for energy awareness views
- Direct access to power meter data, including third party
- Electrical network health summaries with custom graphics
- Power system engineer views including custom one-line diagrams
- Dashboards created with “drag & drop” gadgets
- Display any unit (water, gas, electricity, MMBTU, Therms, etc. if monitored)
- Show energy usage comparisons or breakdowns
- Interactive date ranges for data “zoom in - zoom out”
- Use “Web Image Gadget” to share website content in a dashboard

**1.2.2.6
 Walk in Cooler and Freezer Door Heater Controls**

Scope of work:

Cooler and freezers in the Middle School, the High School, and the Admin building will have controls for the door heaters upgraded to NRM’s Cooltrol system. This will allow the power and runtimes of the door heaters to be automated and controlled based on set conditions (relative humidity).

The following cooler/freezers shall have controls installed

Building	Controlled items		Anti sweat door heater control	Description
	# of cooler doors	# of freezer doors		
Erwin Valley ES	1	1	1DH1FH	Dewpoint based pulse control for anti sweat door heaters
Middle School	2	2	2DH2FH	Dewpoint based pulse control for anti sweat door heaters
Admin		1	1FH	Dewpoint based pulse control for anti sweat door heaters
Calvin Smith	1	1	1DH1FH	Dewpoint based pulse control for anti sweat door heaters
High School	3	2	2DH3FH	Dewpoint based pulse control for anti sweat door heaters
Carder ES	1	1	1DH1FH	Dewpoint based pulse control for anti sweat door heaters
Severn ES	1	1	1DH1FH	Dewpoint based pulse control for anti sweat door heaters

**1.2.3
 Building Envelope Improvements**

Scope of work, description of building envelope leakage modes and proposed changes:

- Single/double door weather stripping
 - New surface mount weather strips and sweeps or replacement pile will be installed as identified on the project design documents.
 - Note: Not all doors are to be weather stripped
- Overhead door weather stripping
 - New commercial grade side seals and bottom seals along with new aluminum carriers will be installed. Our installation method prevents the gaps at the top corners of the doors that are commonly seen.
- Roof Wall Interface Sealing
 - The RWI gaps will be sealed a combination of 1-part foam, 2-part foam, caulk and rigid foam board as indicated on the drawings
- Exhaust Fan Sealing
 - The exhaust fan hoods will be removed and air seal the gap between the duct and the curb at the roof deck. The hood will be reinstalled, and all screws will be caulked to prevent infiltration at the mounting sites. The roof top fans will be inspected for damage and maintenance related items. A master list of condition of the equipment will be compiled and included with the closeout documents.
- Attic Insulation and Air sealing
 - The attic areas identified in the table below will have areas sealed and an additional 10” of cellulose will be added to the existing insulation. This is dependent on confirmation that there is no Asbestos Contaminated Material in these areas.
- Window Frame Caulking
 - The gaps will be sealed with a combination of backer rod as needed.

The following table indicates buildings and counts/feet/square feet that will be addressed in this measure (location details will be shown on the drawings):

Building	To be weather stripped			To be sealed			Attic insulation and air sealing (sf)	Window frame caulk (lineal feet)
	Single doors (count)	Double doors (count)	Overhead doors (count)	Soffit areas (count)	Exhaust fans (count)	Roof wall interface (lineal feet)		
High School	28	23	4	1	94	2012		
Middle School	21	18		3	61	3105		110
Admin	4	9			2	790	6000	
Bus Garage	4		5			358		

1.2.4

Windows – Gregg Elementary

Day Automation will install windows as further identified in the project design documents.

Scope of work:

- The following windows will be replaced in Gregg Elementary school
 - e
 - This is the section of windows that faces north and runs between the renovated east wing and un-renovated west wing
 - Four (4) cafeteria windows
 - The north facing entry on Maple St
 - The west facing entry on Flint Ave
 - Eight classrooms in the northwest wing (400 wing) All the windows in these 8 classrooms will be replaced
 - See project drawings for exact window locations and dimensions
- Existing windows will be removed and new windows installed in their place
 - Existing windows will be demolished and removed by the installing contractor
 - Caulk, other sealants and materials surrounding the windows will be tested for hazardous materials and abated as necessary
 - All necessary abatement shall follow NYS regulations
 - New windows shall have insulated Low-E glass and broken thermal barriers in the frames
 - The new windows will be a mix of operable and fixed units as specified by the architect
 - Insulated panels will be replaced as part of the window system
 - All window panel perimeters shall be sealed in accordance with manufacturers recommendations
 - Emergency egress windows will be installed in each classroom space
 - Doors shall be replaced with similar sizes and similar location to maintain building access as currently configured
 - Installer will be responsible for interior and exterior patching and painting

1.2.5

Bus Garage Heating Improvements

Scope of work for the boiler replacement

- Isolate and drain HHW from mechanical room
- Disconnect all electric
 - Controls and power to boiler
- Shut off and temporarily cap natural gas line
- Demolish and remove the existing boiler, Electromode wall heater (electric),
- Install the following:
 - One (1) new high efficiency boiler
 - New boiler must have a modulating burner with a minimum of 5:1 turndown ratio
 - New boiler must have a minimum of 86% combustion efficiency to meet EPC savings and NYSED requirements
 - New unit shall use concentric intake/exhaust venting
 - Connect existing heating hot water water piping (supply and return) to appropriate connections on the new boiler
 - Install condensate neutralization and ensure condensate is piped to drain
 - One (1) new unit heater in mechanical space
 - Connect to HHW piping
 - Connect power to the now unused breaker for the Electromode heater
 - Existing combustion air intake shall be sealed by the building envelope contractor
- Reconnect natural gas to new boiler
- Reconnect boiler electrical
 - Controls and power
- Refill boiler HHW system
 - Purge excess air from system
 - Ensure manufacturer recommended water chemistry requirements are met
- Test new equipment
 - Boiler firing sequencing and pump operation
 - Test unit heater for proper operation
- Boiler manufacturer's representative will conduct startup testing and training
 - Conduct system commissioning concurrent with this step

Scope of work for the service bay MAU replacement

- Disconnect all electric to existing MAU
 - Controls and power
- Shut off and cap natural gas line
- Demolish and remove the existing MAU and associated ductwork
 - Install blanks over existing ductwork wall penetrations and insulate as necessary
- Install the following:
 - RTU roof curb
 - One (1) new AAON RN-008 heat recovery capable RTU (or equivalent)
 - 2,500 cfm
 - DX cooling with 91 MBH capacity and 12.0 EER
 - Natural gas fired section with 168 MBH capacity
 - Extend natural gas line from existing MAU location to new RTU location
 - New ductwork to reconfigured service bay
- Install new conduit, disconnect and breakers as necessary for power
- Install new Day Automation DDC controls
- Test RTU in accordance with manufacturers startup procedure

- Balance ductwork as necessary

Scope of work for the office furnace replacement:

- Existing furnace will be removed during the demolition phase of the capital work reconfiguring the office and service bay space
- Install the following:
 - RTU roof curb
 - One (1) new AAON RN-011 heat recovery capable RTU (or equivalent)
 - 3,800 cfm
 - DX cooling with 121 MBH capacity and 10.9 EER
 - Reheat coil with 73 MBH capacity supplied from new boiler
 - New ductwork to reconfigured office
- Install new conduit, disconnect and breakers as necessary for power
- Install new Day Automation DDC controls
- Test RTU in accordance with manufacturers startup procedure
- Balance ductwork as necessary

1.2.6 Pump Replacements in High School Boiler Room

Day Automation will replace the 10 pumps shown in the table below (1A&B, 2A&B, 3A&B, 4A&B, 5A&B) with new combination inline pumps/motors. The new pumps will match the existing pressures and flows and also be compatible with the existing variable speed drives.

Unit #	GPM	Head Ft	RPM	Motor HP	Volts	Phase	VFD	Service
P-1 A&B	200	85	1750	10	460	3	Y	Secondary heating loop
P-2 A&B	150	50	1750	5	460	3	Y	Secondary heating loop
P-3 A&B	310	75	1750	10	460	3	Y	Secondary heating loop
P-4 A&B	157	59	1750	5	460	3	Y	Secondary heating loop
P-5 A&B	550	125	1750	25	460	3	Y	Secondary heating loop

Scope of work:

- Isolate and drain HHW from pumps
- Disconnect all electric power to pumps
- Demolish and remove the existing pump/motor combos
 - Pumps 1A&B, 2A&B, 3A&B, 4A&B, 5A&B
- Install new pump/motor combos
 - Compatible with existing variable speed drives
 - Premium efficiency motors
 - Match existing pressures and flows
- Reconnect pump electrical power
- Reprogram pump control
 - The pump pairs will be sequenced to operate in parallel (when possible). This allows the pump pair to deliver the same gpm and ft-hd at a lower combined kW
- Refill boiler HHW system
 - Purge excess air from system
 - Ensure manufacturer recommended water chemistry requirements are met
- Test pump operation

1.3 **OWNER and DAY AUTOMATION Responsibilities** (in addition to those in Article 6 of the Agreement): OWNER shall cooperate with DAY AUTOMATION in DAY AUTOMATION' efforts to obtain rebates. OWNER's cooperation includes, but is not limited to, permitting utility personnel to enter the Facility where the ECM's have been installed in order to verify their installation and that they are operating.

1.4 **Codes:** All applicable state and local building codes.

1.5 **Drawings / Specifications:** Design drawings and specifications will be provided for the Energy Conservation Measures shown on project drawings in NYSED projects as list in Article 1.1 above.

1.6 **As-built Documents:** As-built documents will be provided for all work included in this agreement in both hard copy and electronic format of OWNER's choosing.

Article 2: Work Implementation Period

- 2.1 Commencement of Work: DAY AUTOMATION shall commence the Work upon receipt of written notice to proceed from the OWNER which shall be issued after receiving approval from NYSED and following the closing of the OWNER'S financing, and shall perform the Work diligently and shall complete the Work no later than 12 months after commencement of the Work or as mutually agreed.

Article 3: Scope of Services-Measurement and Verification Program (MVP)

- 3.1 The MVP will provide the OWNER with an Annual Performance Assurance Report within sixty (60) days of the end of each Annual Period.
- 3.2 Measurement and Verification Services are all labor activities, site visits, monitoring and analyses necessary to calculate the Annual Realized Savings achieved by the Project, and to prepare and present the Annual Performance Assurance Report for the respective Annual Period.
- 3.3 Each Annual Measurement and Verification Report shall include:

Post-installation measurement and verification (M&V) is conducted by DAY AUTOMATION to ensure that proper equipment and systems were installed, are operating correctly, and have the potential to generate the predicted savings. The verification is accomplished through commissioning and M&V activities as further detailed in Exhibit C of this agreement

Post-installation M&V activities specified in the M&V plan will include spot measurements, BMS trending and short-term metering. The results of the M&V activities are presented in a Post-Installation Report delivered by the DAY AUTOMATION before final project acceptance. The Post-Installation Report shall contain the following:

1. Overview of proposed energy and cost savings
2. Schedule for all M&V activities
3. Witnessing requirements and customer approval and sign-off requirements
4. Utility rates and the method used to calculate cost savings
5. O&M reporting responsibilities

At least annually, DAY AUTOMATION will verify the installed equipment and systems have been properly maintained, continue to operate correctly, and continue to have the potential to generate the predicted savings. The DAY AUTOMATION will ensure the M&V monitoring and reporting systems are working properly provide fine-tuning of measures throughout the year based on operational feedback and demonstrate the savings that are being achieved. The annual report shall contain the following for ECMs installed:

- Details of baseline conditions and data collected
- Documentation of all assumptions and sources of data
- Details of engineering analysis performed
- How energy savings will be calculated
- Details of any Operations & Maintenance or other cost savings claimed
- Details of proposed energy and cost savings
- Details of post-installation verification activities, including inspections, measurements, analysis and customer project acceptance procedures
- Details of any anticipated routine adjustments to baseline or reporting period energy and/or adjustment parameters

In the case of demolished or decommissioned buildings or removal of ECM equipment by the OWNER, DAY AUTOMATION shall be informed in writing within 30 days regarding that part of the contract involving ECMs that are no longer in place or no longer functional. The M&V report shall reflect the changes brought about by ECMs no longer in place or no longer functional.

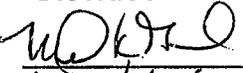
- 3.3.1 The Measured and Verified Savings for the respective Annual Period, including supporting documentation required to complete the Measurement and Verification Plan outlined in Exhibit C of this Agreement.
- 3.3.2 The Annual Realized Savings achieved by the Project shall be determined for each respective Annual Period.
- 3.3.3 A comparison of the Annual Realized Savings and Guaranteed Annual Savings to determine whether there is a Savings Shortfall for the respective Annual Period, pursuant to Exhibit C of this agreement.

Article 4: Scope of Services

- 4.1 Preventative maintenance must be performed to maintain equipment in good condition and to ensure that efficiency is at an acceptable level so project savings targets are met. DAY AUTOMATION will work with the customer to develop a maintenance program that will ensure equipment is maintained and is in accordance with the costs identified in Exhibit B of this agreement. This may include customer performed actions in tandem with Day Automation performed actions.
- 4.2 Emergency Service – Our factory-certified technicians will address and work towards quick resolution of your service issues. In case of a building emergency, we maintain 24 hour service capabilities. Please call 1-800-836-0969 for all issues.
- 4.3 Training of On-Site Staff - Training for new equipment and upgrades installed during the construction phase of the EPC will be scheduled by the project manager for any personnel designated by the customer. This training will be on-site or in a Day Automation classroom depending on the training needed.
- 4.4 Education Support - As a component of our partnership we provide a variety of STEM education collaborative opportunities, including professional staff development, energy efficiency, sustainability, and community outreach. This offering is developed in collaboration with the District to meet your educational priorities.

By signing below, this Exhibit is attached to and made a part of the Agreement between DAY AUTOMATION and the OWNER.

OWNER: CORNING-PAINTED
POST AREA SCHOOL
DISTRICT

Signature: 
Printed Name: Michael R. Gynalski
Title: Superintendent
Date: Feb 13, 2020

**DAY
AUTOMATION:**

Signature: 
Printed Name: Steve MacClip
Title: Energy Svcs Mgr.
Date: 2/14/20

Article 1: Payment for Scope of Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of ECM Work, the OWNER shall pay DAY AUTOMATION \$4,544,532 (See Table B.1.1 - ECM Work Payment Schedule).
- 1.2 **Escrow: (if applicable)** The OWNER has agreed to deposit the Price into an Escrow Account at a financial institution satisfactory to both the OWNER and DAY AUTOMATION. All expenses to establish the Escrow Account shall be the complete responsibility of the OWNER and the OWNER will receive all interest earnings from the Escrow Account.
- 1.3 **Payment Applications -** DAY AUTOMATION will submit periodic invoices to the OWNER based on the Payment Schedule in Table B.1.1 below. The OWNER shall be responsible for submitting the necessary documents to the Escrow Agent to allow for timely disbursements from the Escrow Account.
- 1.4 **Timely Payments:** The OWNER agrees to pay DAY AUTOMATION per Table B.1.1 below. OWNER agrees to pay all invoices submitted by DAY AUTOMATION per General Condition Section of this agreement.
- 1.5 **Retainage:** Except as otherwise required by law, the OWNER shall retain Five Percent (5%) of the amount of the progress payments set forth in Table B.1.1, until a certificate of Substantial Completion is executed or, in the event of multiple Certificates of Substantial Completion, until the final Certificate of Substantial Completion is executed. All retainage shall be paid to DAY AUTOMATION prior to the Guarantee Date.

Table B.1.1 – ECM Work Payment Schedule

Project Phase	Payments (\$)	Payments (%)	Schedule
Architect/Engineering / Audit / Startup	\$454,453	10%	Upon close of financing
Month #1	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #2	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #3	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #4	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #5	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #6	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #7	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #8	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #9	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #10	AIA Billing	AIA Billing	Net 30 Days from invoice
Month #11	AIA Billing	AIA Billing	Net 30 Days from invoice
PROJECT TOTAL:	\$4,544,532	100%	

Article 2: Payment for Measurement and Verification Program (MVP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the OWNER shall pay to DAY AUTOMATION the annual amount escalated at 3% per annum as shown in Table B.2 below. Payment is due at the beginning of the MVP period.
- 2.2 **Measurement and Verification Program Term:** The term of the MVP shall commence on the Guarantee Date and shall extend for 3 years with the option to extend on an annual basis.
- 2.3 **Automatic Renewal:** Where the MVP term is limited to an Annual Period, the MVP shall automatically renew for successive Annual Periods beginning on the anniversary date of Guarantee Date. Either party may request to amend the MVP at the end of an Annual Period by giving the other party at least sixty (60) days prior written notice of such amendments and such amendment shall be mutually negotiated by the Parties and effective upon a written amendment signed by both Parties prior to commencement of the next Annual Period. Each automatic renewal shall be and remain subject to the terms and conditions of this Agreement. DAY AUTOMATION obligations under the Performance Guarantee are dependent upon and subject to the express condition that the OWNER maintains the MVP during the entire Performance Guarantee Period.
- 2.4 **Termination:** See Section Minimum Standard Clauses of the Agreement.

Table B.2 – Measurement and Verification Program Payment Schedule

Date	Annual Payments (\$)
Annual Period 1	\$0
Annual Period 2	\$30,000
Annual Period 3	\$39,100
Annual Period 4	\$39,882

Article 3: Payment for Mechanical Maintenance Services Program (MMP)

- 3.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 4, the OWNER shall pay to DAY AUTOMATION the annual sums set forth in Table B.3 below (plus applicable taxes if any). Payment is due at the beginning of the MSTSP period.
- 3.2 **Maintenance Services Term:** The Term of the MMP shall be 3 years and shall commence on Effective Guarantee Date.
- 3.3 **Termination:** OWNER may terminate the MMP portion of this Agreement upon at least sixty (60) days prior written notice to DAY AUTOMATION.

Table B.3 – Maintenance Services Technical Support Program Payment Schedule

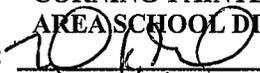
Date	Annual Payments (\$)
Annual Period 1	\$0
Annual Period 2	\$2,500
Annual Period 3	\$12,000
Annual Period 4	\$12,240

Article 4: Guarantee Term Responsibilities of DAY AUTOMATION and OWNER

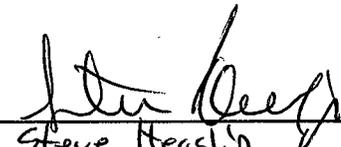
4.1 DAY AUTOMATION will apply for rebate and incentive funds on the behalf of the OWNER that may be available through programs such as the programs that are managed by NYSERDA and Local Utility providers which will require DAY AUTOMATION having to submit all required documentation and measurement and verification. These funds, however, are not guaranteed to be available and are based on project performance.

By signing below, these Articles 1 - 4 of Exhibit B are attached to and made a part of the Agreement between the DAY AUTOMATION and the OWNER .

OWNER : CORNING-PAINTED POST
AREA SCHOOL DISTRICT

Signature: 
Printed Name: Michael K. Gucinski
Title: Superintendent
Date: Feb 13, 2021

**DAY
AUTOMATION:**

Signature: 
Printed Name: Steve Heaslip
Title: Energy Svc. Mgr.
Date: 2/14/20

The following Articles and Tables are hereby included and made part of this Exhibit C:

Article 1: Summary of Articles and Total Guaranteed Savings

Article 1	Summary of Articles and Total Guaranteed Savings
Article 2	Measurement and Verification Options
Article 3	Performance Guarantee Period Responsibilities of OWNER
Article 4	Performance Guarantee
Article 5	Measurement and Verification Plan
Article 6	Baseline Data
Article 7	Utility Rate Structures and Escalation Rates
Article 8	Contracted Baseline Data

This Exhibit C provides the methodology to be used to determine the Annual Realized Savings and the reconciliation of these calculated Savings with the Guaranteed Annual Savings for each Annual Period of the Performance Guarantee Period. The Scope of Services for the Measurement and Verification Program is provided in Article 3 of Exhibit A.

Table 1.1 – Total Guaranteed Savings (Units)

Annual Period	Electric Energy Savings (kWh)	Electric Demand Savings (kW)	Natural Gas Savings (Therms)
Annual Period 1	1,385,777	2,427	231,417

- 1.1 Only Annual Period 1 is shown as the energy/utility unit Savings will remain constant for each Annual Period of the Performance Guarantee Period as the OWNER will operate the Facility in accordance with the Contracted Baseline identified in Article 8.

Table 1.2 – Total Guaranteed Savings (Cost)

Annual Period	Energy/ Utility Savings	Operational Savings	Total Savings
Annual Period 1	\$219,615	\$65,359	\$284,974
Annual Period 2	\$224,007	\$66,666	\$290,673
Annual Period 3	\$228,487	\$68,000	\$296,487
Annual Period 4	\$233,057	\$69,360	\$302,417
Annual Period 5	\$237,718	\$70,747	\$308,465
Annual Period 6	\$242,472	\$72,162	\$314,634
Annual Period 7	\$247,322	\$73,605	\$320,927
Annual Period 8	\$252,268	\$75,077	\$327,346
Annual Period 9	\$257,314	\$76,579	\$333,892
Annual Period 10	\$262,460	\$78,110	\$340,570
Annual Period 11	\$267,709	\$79,673	\$347,382
Annual Period 12	\$273,063	\$81,266	\$354,329
Annual Period 13	\$278,525	\$82,891	\$361,416
Annual Period 14	\$284,095	\$84,549	\$368,644
Annual Period 15	\$289,777	\$86,240	\$376,017
Annual Period 16	\$295,573	\$87,965	\$383,537
Annual Period 17	\$301,484	\$89,724	\$391,208
Annual Period 18	\$307,514	\$91,519	\$399,032
TOTALS	\$4,702,460	\$1,399,493	\$6,101,953

- 1.2 Table 1.2 shows the OWNER'S guaranteed cost Savings for each Annual Period that are extrapolated from the guaranteed energy/utility unit Savings shown in Table 1.1 by multiplying the energy/utility Savings by the Baseline energy/utility rates including the stipulated Escalation Rates found in Article 7.
- 1.3 DAY AUTOMATION cannot and does not predict fluctuations in utility rates or the cost of energy. Therefore, the OWNER and DAY AUTOMATION agree that the energy/utility cost Savings for each Annual Period will be calculated by multiplying the verified units of energy/utility Savings by the Annual Period's stipulated energy/utility rate and Escalation Rates and not the Annual Period's actual utility rate.
- 1.4 The determination of energy/utility Savings will follow current best practice, as defined in the IPMVP, or the FEMP Guidelines where required, unless otherwise agreed to by the Parties.
- 1.5 The Performance Guarantee does not operate to guarantee the Savings per-ECM. Rather, the calculation of Savings is based on aggregate performance of all of the ECMs contained in the Project. The projected value of such aggregate performance is contained in Table 1.2 above representing the Total Guaranteed Savings as monetized.

Article 2: Measurement and Verification Options

- 2.1 Guarantee Types. There are three guarantee options to measure and verify Savings: Option A – Measured Capacity, Option B – Measured Consumption, and Option C – Main Meter Comparison. These options are in accordance with the “North American Energy Measurement and Verification Protocol” (March 1996) (NAEMVP).
- a. **Option A** – Measured Capacity, Stipulated Consumption Approach. The verification techniques for Option A determine savings by measuring the performance of a system before and after the retrofit, and multiplying the difference by an agreed upon or “stipulated” factor. The calculations for energy consumption will be defined in the Measurement and Verification article of this Exhibit C.
 - b. **Option B** – Measured Capacity, Measured Consumption. Verification techniques for Option B are designed for projects where long-term continuous measurements of performance are desired. Under Option B, individual loads are continuously monitored to determine performance, and this measured performance is compared with a baseline to determine savings. The calculations for energy consumption will be defined in the Measurement and Verification article of this Exhibit C.
 - c. **Option C** – Whole Building or Main Meter Comparison. This approach is intended for measurements of the whole-facility or specific meter baseline energy use, and measurements of whole-facility or specific meter post-implementation (Post) energy use can be measured. The methodology to establish baseline and Post parameter identification, modeling approach and baseline or model adjustments will be defined in the Measurement and Verification article of this Exhibit C. Periodic inspections of baseline energy usage, operating practices, and facility and equipment, and meter measurements of the will be necessary to verify the on-going efficient operation of the equipment, systems, practices and facility, and saving attainment.
- 2.2 Table 2.1 below summarizes the first Annual Period’s Guaranteed Savings (See Article 1, Tables 1.1 and 1.2) utilizing the applicable Measurement and Verification Options as applied to the referenced ECMs and valued pursuant to the agreed upon Utility Rate Structure amounts identified in Article 7 hereof.

Table 2.1 – Savings for First Annual Period by Option

Location	Energy Conservation Measure	Energy/Utility Savings \$		Operational Savings \$	Total Savings \$
		Guarantee Options			
		A	Total		
		Retrofit Isolation: Key Parameter Measurement	Energy/ Utility Savings		
Admin	LED lighting upgrade	\$7,938	\$7,938	\$7,487	\$15,425
Admin	Building automation	\$321	\$321	\$1,563	\$1,884
Admin	Building envelope improvements	\$1,633	\$1,633	\$0	\$1,633
Bus Garage	LED lighting upgrade	\$1,172	\$1,172	\$625	\$1,797
Bus Garage	Building automation	\$54	\$54	\$447	\$501
Bus Garage	Building envelope improvements	\$194	\$194	\$0	\$194
Bus Garage	Heating improvements	\$2,155	\$2,155	\$1,500	\$3,655
Carder ES	Walk in cooler controls	\$147	\$147	\$0	\$147
Erwin Valley ES	Walk in cooler controls	\$203	\$203	\$0	\$203
Gregg ES	Walk in cooler controls	\$406	\$406	\$0	\$406
Gregg ES	Window replacements	\$633	\$633	\$1,500	\$2,133
HS	LED lighting upgrade	\$15,879	\$15,879	\$13,393	\$29,272
HS	Walk in cooler controls	\$471	\$471	\$0	\$471
HS	Building automation	\$68,015	\$68,015	\$8,037	\$76,052
HS	Building envelope improvements	\$5,014	\$5,014	\$0	\$5,014
HS	Runtime reduction	\$56,712	\$56,712	\$0	\$56,712
HS	Replace 10 HHW circulating pumps	\$5,639	\$5,639	\$250	\$5,889
MS	LED lighting upgrade	\$12,974	\$12,974	\$8,188	\$21,162
MS	Walk in cooler controls	\$345	\$345	\$0	\$345
MS	Building automation	\$22,181	\$22,181	\$7,591	\$29,772
MS	Building envelope improvements	\$1,725	\$1,725	\$0	\$1,725
MS	Runtime reduction	\$9,764	\$9,764	\$0	\$9,764
Severn ES	Walk in cooler controls	\$98	\$98	\$0	\$98
Smith ES	Walk in cooler controls	\$164	\$164	\$0	\$164
Stadium	Building automation	\$2,776	\$2,776	\$112	\$2,888
Stadium	LED lighting upgrade	\$2,886	\$2,886	\$14,667	\$17,553
Admin	Walk in cooler controls	\$115	\$115	\$0	\$115
TOTAL		\$219,615	\$219,615	\$65,359	\$284,974

2.3 Table 2.2 identifies the source of Operational Savings defined and quantified by the Parties. The Parties affirm that such amounts are Stipulated Savings for purposes of calculating Annual Realized Savings and acknowledge that the Guaranteed Savings identified herein have been based on OWNER 'S affirmation. Operational savings shall not be measured or monitored during the performance guarantee period.

Table 2.2 – Operational Savings (Cost)

Location	Description	Annual Period 1 Cost Savings	# of Annual Periods Savings are Applied	Annual Periods Savings Begin
Admin	LED lighting upgrade	\$7,487	18	1
Admin	Building automation	\$1,563	18	1
Bus Garage	LED lighting upgrade	\$625	18	1
Bus Garage	Building automation	\$447	18	1
Bus Garage	Heating improvements	\$1,500	18	1
Gregg ES	Window replacements	\$1,500	18	1
HS	LED lighting upgrade	\$13,393	18	1
HS	Building automation	\$8,037	18	1
HS	Replace 10 HHW circulating pumps	\$250	18	1
MS	LED lighting upgrade	\$8,188	18	1
MS	Building automation	\$7,591	18	1
Stadium	Building automation	\$112	18	1
Stadium	LED lighting upgrade	\$14,667	18	1

2.4 DAY AUTOMATION has explained to the OWNER and the OWNER has satisfied itself as to how Operational Savings are incorporated into the Annual Realized Savings.

Article 3: Performance Guarantee Period Responsibilities of the OWNER

In addition to the OWNER 'S responsibilities under this Agreement, this Article details the responsibilities of the OWNER in connection with the management and administration of the Performance Guarantee.

- 3.1 The OWNER will provide a representative at each Facility to coordinate work and provide required data described below. Further the Owner will designate a primary person with authority to make decisions for the OWNER regarding the Work and provide information sufficient to contact this person in the event of an emergency.
- 3.2 Upon request from DAY AUTOMATION, The OWNER will make arrangements for 24 hour, 7 day a week access to the Work areas and make all reasonable provisions for DAY AUTOMATION to perform Work as necessary during these hours.
- 3.3 Permit DAY AUTOMATION to operate and control all building systems as necessary for performance of the Work.
- 3.4 The OWNER shall promptly notify DAY AUTOMATION of all known Hazardous materials in the facilities and/or any conditions requiring special care that may affect the Work and provide necessary documentation for such materials or requirements.
- 3.5 The OWNER will notify DAY AUTOMATION of safety programs or requirements, and other policies , plans, or programs required in the facilities where Work is to be performed.

- 3.6 The OWNER will operate, service and maintain all Equipment according to the manufacturer’s recommendations including those set forth in the manufacturer’s operating manuals or instructions, as well as all requirements of Applicable Law or of authorities having jurisdiction. The OWNER shall be responsible for furnishing all required servicing and parts necessary for the Equipment to operate as required to and in accordance with the requirements of the Agreement. Such Equipment shall be operated only in the specified operating environment, which shall be supplied by the OWNER, including without limitation: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment.
- 3.7 Promptly notify DAY AUTOMATION of any unusual operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may materially affect the Equipment or energy usage or any Services.
- 3.8 The OWNER will provide DAY AUTOMATION with accurate Facility operating information as defined below and in the Contracted Baseline article of this Exhibit C during each Annual Period, within thirty (30) days of any Material Change that may increase or decrease energy usage.
- 3.9 If applicable, the OWNER will provide DAY AUTOMATION with copies of utility bills within thirty (30) days of receipt by the OWNER or provide access to utility vendor information to allow DAY AUTOMATION to include a utility bill analysis in the Annual Measurement and Verification Report. The utility bill analysis does not take the place of the Measurement and Verification Plan identified in Article 4 of this Exhibit C and is not used to measure the Project’s performance. Utility electric, natural gas, and fuel oil accounts provided in Table 3.1.

Table 3.1 – Utility Accounts

Building	NYSEG Electric Acct #	Corning Natural Gas Acct #	UGI and Empire Natural Gas Acct #
Carder ES	10010658119	0002570-09026727202	2570
Erwin Valley ES	10012524368	0017364-09026144000	17364
Gregg ES	10013560742	0005720-00013001251	5720
Severn ES	10010657962	0002203-00005006200	2203
Smith ES	10012523469	0008851-00021005750	8851
Winfield ES	10013499891	0007863-00019002850	7863
HS	10039431076	0007460-00018012720	7460
MS	10010002060	0023210-00028000000	23210
Admin	10012523428	0010686-00027002801	10686
Bus Garage	10017151555	0009209-00022002860	9209
Bus Garage	10017151563		
Bus Garage	10017151571		
Stadium	10013560445	0007458-00018012200	7458
Scoreboard	96389513		
MS sidewalk lights	10012523493		
MS bleachers	10012523501		
EH Well-23	10013560478		

- 3.10 If required for the Work, OWNER will provide data remote access, through DAY AUTOMATION software package or otherwise, as DAY AUTOMATION reasonably requests. All charges related to data line installation, activation and communication services are the responsibility of the OWNER .

- 3.11 If remote data access is unavailable, the OWNER will provide DAY AUTOMATION with required trends from the Building Management System in digital format on a monthly basis. The trends will either be sent electronically via email or transferred to portable memory for use by DAY AUTOMATION. If the required trends are not supplied to DAY AUTOMATION within thirty (30) days, DAY AUTOMATION reserves the right to deem the savings associated with those ECMs requiring trends for savings verification achieved.

Article 4: Performance Guarantee

- 4.1 The Annual Realized Savings generated during each Annual Period will be no less than the Guaranteed Annual Savings as shown in Tables 1.1 and 1.2 of this Exhibit C, subject to the limits in Section 4.8. The measurement and verification calculation methodology for determining the Savings is set forth in Article 5 of this Exhibit C.
- 4.2 Any future Escalation Rates to be applied to utility, energy or other costs are set forth in Table 7.1. DAY AUTOMATION and the OWNER agree that the Baseline data set is a full and accurate reflection of the existing Facility, equipment, operation, business use and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.
- 4.3 DAY AUTOMATION and the OWNER agree that the Contracted Baseline fully described in herein will represent the new operating and/or equipment profile of the Facility resulting from the ECM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the OWNER operates and maintains its Facilities within the Contracted Baseline parameters, as may be adjusted in accordance with the terms herein, during the entire term of the Performance Guarantee Period.
- 4.4 The OWNER agrees to notify DAY AUTOMATION prior to or within thirty (30) days of OWNER's knowledge of any Material Change in the Contracted Baseline parameters.
- 4.5 Within thirty (30) days of notice of a Material Change, DAY AUTOMATION's discovery of a Material Change and with prompt notice to OWNER, DAY AUTOMATION will either:
- (a) Negotiate with the OWNER an adjustment to the Measurement and Verification and the Performance Guarantee as a result of the Material Change; or,
 - (b) Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate both the Measurement and Verification Program and the Performance Guarantee.
- 4.6 A Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each Annual Period as follows:
- (a) Within ninety (90) days of the Guarantee Date, the Construction Period Savings shall be reconciled and applied to the calculation of the first Annual Period's Annual Realized Savings.
 - (b) At the conclusion of each Annual Period, DAY AUTOMATION will calculate the Annual Realized Savings and compare the calculated amount to the applicable Guaranteed Annual Savings amount.
 - (c) Where the Annual Realized Savings are less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded for the applicable Annual Period.
 - (d) A Savings Shortfall shall be paid by DAY AUTOMATION within sixty (60) days following the OWNER's acceptance of the reconciliation and once paid DAY AUTOMATION shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period.
- 4.6.1 As the mutual goal of the Parties is to maximize Savings, if DAY AUTOMATION can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the OWNER and without future operational expenses, and the OWNER declines to allow such operational improvement, then any future Savings Shortfall that the improvement would have corrected will be negated by deeming the value of the Savings Shortfall as Savings achieved and adding the amount of same to the Annual Realized Savings calculations for each Annual Period thereafter.
- 4.7 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the OWNER under this Performance Guarantee. Any payments made or to be made to the OWNER under the terms of this

performance guarantee shall not exceed the payment actually made by the OWNER to DAY AUTOMATION for the aggregate of: the price as defined in Exhibit B Article 1 and, if applicable, the OWNER'S cost of financing the work.

- 4.8 The OWNER represents that all existing equipment that is not installed by DAY AUTOMATION under this Agreement but is deemed necessary to achieve the Performance Guarantee, is in satisfactory working condition. Prior to the beginning of the Performance Guarantee Period, DAY AUTOMATION will have inspected all such existing equipment and reported any deficiencies to the OWNER. To the extent that the deficiencies are not remedied by the OWNER prior to the Guarantee Date, the adverse effect on the ability of the Project to attain the necessary Guaranteed Savings shall be factored into the Annual Measurement and Verification Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.
- 4.9 If the Equipment or the existing equipment is altered or moved by any person (including the OWNER) other than DAY AUTOMATION or a person authorized by DAY AUTOMATION, the OWNER shall immediately notify DAY AUTOMATION in writing, and DAY AUTOMATION reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the OWNER's expense in order to determine if a Material Change has occurred.
- 4.10 DAY AUTOMATION will have no liability or obligation to continue providing Services or any Guaranteed Savings under the Performance Guarantee in the event that the OWNER fails to:
- (a) Authorize a re-acceptance test or re-commissioning that DAY AUTOMATION reasonably deems necessary in order to determine if a Material Change has occurred;
 - (b) Provide access to any Facility where Work is to be performed;
 - (c) Service and maintain all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
 - (d) Provide DAY AUTOMATION with accurate Facility operating information as soon as such information becomes reasonably available to the OWNER, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period.
- 4.11 Unless expressly contrary to Applicable Law, should the OWNER decide to discontinue the Annual Services defined in Exhibit A before the end of the Performance Guarantee Period, the OWNER will give DAY AUTOMATION thirty (30) days prior written notice and will mutually reconcile the remaining contract value and services to be completed in the services agreement for that period.
- 4.12 Unless expressly contrary to Applicable Law, any disputes concerning the calculation of the Annual Realized Savings or changes to the Contracted Baseline that are not resolved by negotiation between the Parties within thirty (30) days of the notice of the dispute, will be resolved by a third-party professional engineering firm which is reasonably acceptable to both DAY AUTOMATION and the OWNER. The determination of such firm will be final and binding upon OWNER and DAY AUTOMATION. DAY AUTOMATION and the OWNER will each be responsible for half of the fees of such firm.

Article 5: Measurement and Verification Plan

The following information is applicable to this Agreement:

- Article 5.1 General Overview
- Article 5.2 Option A – Measured Capacity, Stipulated Consumption Approach
- Article 5.3 Option B – Measured Capacity, Measured Consumption

5.1 General Overview –

The purpose of the Measurement and Verification (M&V) Plan is to identify the methods, measurements, procedures and tools that will be used to verify the Savings for each ECM which has energy/utility Savings. Savings are determined by comparing prior usage, consumption or efficiencies (defined as the “Baseline”) against the post-ECM implementation usage, consumption or efficiencies. The Baseline usage, consumption or efficiencies are described in this Exhibit C, Article 5. The post-ECM implementation usage, consumption or efficiencies is defined as the Contracted Baseline and are described in this Exhibit C, Article 8.

5.2 Option A – Measured Capacity, Stipulated Consumption Approach

5.2.1 LED Lighting Upgrade

Scope of work:

Lighting will be addressed at the following buildings in Phase 1 of this EPC:

1. CPP High School
2. CPP Middle School
3. CPP Administration building
4. CPP Bus Garage
5. CPP Stadium

Savings are based on reduced fixture wattage reduced operating hours from controls and more efficient lighting equipment.

$$\text{Annual lighting kW savings} = \sum_{\text{area}} (\text{kW}_{\text{existing}} - \text{kW}_{\text{proposed}})$$

$$\text{Annual lighting kWhr savings} = \sum_{\text{area}} (\text{kW}_{\text{existing}} - \text{kW}_{\text{proposed}}) * \text{run hours} + \text{kW}_{\text{proposed}} * \text{control hr reduction}$$

$$\text{Thermal penalty MMBtu} =$$

Where:

$$\text{kW}_{\text{existing}} = \sum (\text{existing fixture wattage per building}) / 1000$$

$$\text{kW}_{\text{proposed}} = \sum (\text{proposed fixture wattage per building}) / 1000$$

run hours = run hours for the given area

control hr reduction = the hour reduction due to controls specified for the given area

5.2.2 Building Controls Upgrade

Location: All school buildings

Day Automation will replace the Delta Controls and pneumatic systems with EcoStruxure and replace control panels and terminal device operators and wiring as necessary to make the system fully operational. Continuum at the HS and MS will be upgraded to EcoStruxure to ensure all buildings can be monitored from the same system.

5.2.2.1 Demand controlled ventilation

Day Automation will add CO2 sensors to the controlled spaces served by these air handling units, and the CO2 sensors and programming will allow control of outside air dampers by using space CO2 levels as a proxy for occupancy levels. CO2 levels will be maintained at ambient+700ppm (approximately). As occupancy and CO2 increase, OA dampers will be programmed to modulate open, as occupancy and CO2 decrease, OA dampers will be programmed to modulated closed.

Air handling units serving large spaces will be modified to work with CO2 sensors and the demand control programming.

Scope of work:

The air handling units listed in the table below will be controlled with a demand controlled ventilation sequence:

Building	AHU ID	Service	Total CFM	Existing average OA CFM	Min OA CFM from schedules	Htg coil MBH	Clg coil MBH	# of CO2 sensor
HS	AHU-1&2	HS gym	22500	13000	21250	2072	1140	4
HS	AHU-3	HS aux gym	7500	4500	6325	683	374	4
HS	AHU-8	Auditorium	26000	11200	18900	1691	1200	4
HS	AHU-7	Cafeteria	11200	7560	9200	1002	555	4
HS	AHU-6	Gym wing lobby	6300	1800	2300	321	248	2
HS	AHU-12	Band C207	3200	790	855	170	134	2
HS	AHU-13	Instr. Music C203	3200	750	855	170	134	2
HS	AHU-14	Vocal music C206	3000	650	720	153	122	2
MS	Gym	Gym	20000	4250	4000	1080		4
MS	aux gym ahu	MS aux gym	10000	2400	2800	471.8		4
MS	AHU-8	Auditorium	12000	2050	2400	583	480	4
MS	AHU-7	Cafeteria	8460	3100	3580	625.7	408.4	4
MS	AHU-6	Gym balcony and bleacher	10000	1800	2000	972	0	2

- CO2 sensors will be installed in the spaces listed above
 - The number of sensors has been approximated based on space size and use

Savings are based on the reduced runtime for HVAC equipment and also the reduced OA flow rates during warmup mode.

$$\text{Annual Btu savings} = \Sigma 1.08 \cdot \text{OA}_{\text{cfm}} \cdot (\text{space setpoint} - \text{space setback temp}) \cdot (\text{runtime hours}) - \Sigma 1.08 \cdot \text{CO2 based OA CFM} \cdot (\text{space setpoint} - \text{space setback temp}) \cdot (\text{runtime hours})$$

5.2.2.2 Optimum start sequencing

All ventilation, heating and cooling equipment (excluding the boiler and HHW circulation systems) will be programmed with optimum start sequencing. This sequence will allow the equipment to start in warm up mode with OA dampers closed. The sequence also uses OA temperature and space temperature to start the warmup sequence just in time such that the space is at temperature in time for occupancy. This greatly reduces the time needed for space warmup thus reducing both heating energy and power to operate the blower fans.

Scope of work:

The following controlled areas shall have the start/stop programming modified to enable optimum start, please note the new occupied times for the programming:

Building	AHU ID	Service	Space occupied heating setpoint	Space unoccupied htg setpoint	Existing		Proposed	
					Start time	Stop time	Actual occupied time	Unoccupied time
MS	MS	Classroom Uvs	71	60	0:00	24:00:00	6:30	17:30
MS	MS	Classroom FCUs	71	60	0:00	24:00:00	6:30	17:30
MS	MS	Classroom BCUs	71	60	0:00	24:00:00	6:30	17:30
HS	HS	Classroom Uvs	71	60	0:00	24:00:00	7:15	17:30
HS	HS	Classroom FCUs	71	60	0:00	24:00:00	7:15	17:30
HS	HS	Classroom BCUs	71	60	0:00	24:00:00	7:15	17:30

Savings are based on the reduced runtime for HVAC equipment and also the reduced OA flow rates during warmup mode.

$$\text{Annual Btu savings} = \Sigma 1.08 \cdot \text{OA}_{\text{cfm}} \cdot (\text{space setpoint} - \text{space setback temp}) \cdot (\text{w/u hours}) -$$

$$\Sigma 1.08 \cdot \text{OA}_{\text{cfm}} \cdot \text{OA damper leak-by} \cdot (\text{space setpoint} - \text{space setback temp}) \cdot (\text{new w/u hours})$$

$$\text{Annual motor kWhr savings} = \text{motor kW} \cdot \text{reduction in run hours (from shorter w/u periods)}$$

5.2.2.3 Equipment runtime reduction

Day Automation will reschedule and monitor equipment with excessive runtimes via the new EcoStruxure system. This equipment will have start times approximately 1 hour before occupancy (adjustable) and run to the end of occupied hours.

It is recommended to implement a District temperature control policy to help students and staff understand why the building temperature is controlled as it is.

Scope of work:

- The equipment in the table below shall have the operating schedules adjusted such that the associated HVAC equipment will run in occupied mode during the occupied hours
- During unoccupied hours the associated HVAC equipment will be of except to maintain the night setback temperature associated with that space.
- HVAC equipment operating during unoccupied hours shall run with the outside air dampers closed

Exhibit C – Measurement and Verification
 Corning-Painted Post Area School District

Building	AHU ID	Service	Scheduled occ time	Scheduled unocc time
MS	Gym	Gym	6:30	17:30
MS	AHU-4	MS aux gym	6:30	17:30
MS	AHU-8	Auditorium	6:30	17:30
MS	AHU-7	Cafeteria	6:30	17:30
MS	AHU-6	Gym balcony and bleacher	6:30	17:30
HS	AHU-1&2	HS gym	7:00	22:30
HS	ERV 1,2,3	Areas H, G, I	7:00	22:30
HS	AHU-3	HS aux gym	7:00	22:30
HS	AHU-8	Auditorium	6:30	22:30
HS	AHU-7	Cafeteria	6:30	22:30
HS	AHU-6	Gym wing lobby	7:00	22:30
HS	AHU-1	Library	7:15	17:30
HS	AHU-12	Band C207	7:15	17:30
HS	AHU-13	Instr. Music C203	7:15	17:30
HS	AHU-14	Vocal music C206	7:15	17:30

Savings are based on the reduced temperature difference between indoor spaces and outside air.
 Annual Btu savings = $\sum 1.08 \cdot OA_{cfm} \cdot (\text{space setpoint} - \text{space setback temp}) \cdot (\text{unocc run hours}) - \sum 1.08 \cdot OA_{cfm} \cdot OA \text{ damper leak-by} \cdot (\text{space setpoint} - \text{space setback temp}) \cdot (\text{unocc run hours})$
 Annual motor kWhr savings = motor kW * reduction in run hours

5.2.2.4 Middle School boiler room pump parallel operation

Unit #	GPM	Head Ft	RPM	Motor HP	Volts	Phase	VFD	Service
P-1 A&B	1300	60	1750	40	200	3	Y	Primary circulating loop
P-2 A&B	115	50	1750	5	200	3	Y	Secondary heating loop
P-3 A&B	60	40	1750	1.5	200	3	Y	Secondary heating loop
P-4 A&B	60	45	1750	1.5	200	3	Y	Secondary heating loop
P-5 A&B	174	75	1750	7.5	200	3	Y	Secondary heating loop
P-6 A&B	244	100	1750	15	200	3	Y	Secondary heating loop

Day Automation will program the 12 pumps shown in the table above (1A&B, 2A&B, 3A&B, 4A&B, 5A&B, 6A&B) for parallel operation. By operating in parallel the pumps can run at 1/2 the speed required of one pump and because of the pump laws will use approximately 1/8 the electrical energy.

Savings are based on the reduced pump speed (and pump motor kW) during shoulder month heating operation.

Annual kWhr savings = annual existing kWhr during heating season - annual proposed kWhr during heating season

$$\text{Annual kWhr savings} = \sum kW_{\text{existing}} \cdot \text{hrs}_{\text{bin temp}} - \sum kW_{\text{bin temp}} \cdot \text{hrs}_{\text{bin temp}}$$

kW_{existing} = existing measured pump kW

$\text{hrs}_{\text{bin temp}}$ = hours per temperature bin for Elmira NY heating season

$kW_{\text{bin temp}}$ = proposed pump kW associated with temperature bin for Elmira NY heating season

5.2.2.6 Walk in Cooler and Freezer Door Heater Controls

Cooler and freezers in the Middle School, the High School, and the Admin building will have controls for the door heaters upgraded to NRM’s Cooltrol system. This will allow the power and runtimes of the door heaters to be automated and controlled based on set conditions.

Savings are based on the reduced door heater kW and runtime:

Annual cooler door heater kWhr savings = annual existing kWhr - annual proposed kWhr = $kW_{existing} * run\ hours_{existing} - kW_{proposed} * run\ hours_{proposed}$;
 $kW_{existing}$ = existing door heater kW
 run hours_{existing} = existing run hours per year
 $kW_{proposed}$ = proposed door heater kW
 run hours_{proposed} = proposed run hours per year

Annual freezer door heater kWhr savings = annual existing kWhr – annual proposed kWhr = $kW_{existing} * run\ hours - kW_{proposed} * run\ hours$;
 $kW_{existing}$ = existing door heater kW
 $kW_{proposed}$ = proposed door heater kW
 run hours = 8760 hours per year

5.2.3 Building Envelope Improvements

Scope of work, description of building envelope leakage modes and proposed changes:

- Single/double door weather stripping
 - New surface mount weather strips and sweeps or replacement pile will be installed
 - Note: Not all doors are to be weather stripped
- Overhead door weather stripping
 - New commercial grade side seals and bottom seals along with new aluminum carriers will be installed. Our installation method prevents the gaps at the top corners of the doors that are commonly seen.
- Roof Wall Interface Sealing
 - The RWI gaps will be sealed a combination of 1-part foam, 2-part foam, caulk and rigid foam board as indicated on the drawings
- Exhaust Fan Sealing
 - The exhaust fan hoods will be removed and air seal the gap between the duct and the curb at the roof deck. The hood will be reinstalled, and all screws will be caulked to prevent infiltration at the mounting sites. The roof top fans will be inspected for damage and maintenance related items. A master list of condition of the equipment will be compiled and included with the closeout documents.
- Attic Insulation and Airsealing
 - The attics that are being called out will have all sealed and an additional 10” of cellulose will be added to the existing. This is dependent on confirmation that there is no Asbestos Contaminated Material in these areas.
- Window Frame Caulking
 - The gaps will be sealed with a combination of backer rod as needed.

The following table indicates buildings and counts/feet/square feet that will be addressed in this measure (location details will be shown on the drawings):

To be weather stripped	To be sealed
-------------------------------	---------------------

Exhibit C – Measurement and Verification
 Corning-Painted Post Area School District

Building	Single doors (count)	Double doors (count)	Overhead doors (count)	Soffit areas (count)	Exhaust fans (count)	Roof wall interface (lineal feet)	Attic insulation and air sealing (sf)	Window frame caulk (lineal feet)
High School	28	23	4	1	94	2012		
Middle School	21	18		3	61	3105		110
Admin	4	9			2	790	6000	
Bus Garage	4		5			358		

Savings are based on the reduced infiltration of unconditioned air that is required to be heated.

$$\text{Annual Btu savings} = \Sigma 1.08 * \text{leakage cfm} * (\text{space setpoint} - \text{outside air temp bin}) * (\text{run hours})$$

5.2.4 Insert Bus Garage Air Handling Units information

Scope of work for the boiler replacement

- Demolish and remove the existing boiler, Electromode wall heater (electric),
- Install the following:
 - One (1) new high efficiency boiler
- Reconnect natural gas to new boiler

Scope of work for the service bay MAU replacement

- Demolish and remove the existing MAU and associated ductwork
- Install the following:
 - RTU roof curb
 - One (1) new AAON RN-008 heat recovery capable RTU (or equivalent)
 - 2,500 cfm
 - DX cooling with 91 MBH capacity and 12.0 EER
 - Natural gas fired section with 168 MBH capacity

Scope of work for the office furnace replacement:

- Existing furnace will be removed during the demolition phase of the capital work reconfiguring the office and service bay space
- Install the following:
 - One (1) new AAON RN-011 heat recovery capable RTU (or equivalent)
 - 3,800 cfm
 - DX cooling with 121 MBH capacity and 10.9 EER
 - Reheat coil with 73 MBH capacity supplied from new boiler

Boiler savings are based on improved boiler efficiency and removal of electric heaters in the mechanical room.

$$\text{Annual therm savings} = \text{existing therms} - (\text{MBH}_{\text{existing}} * \eta_{\text{existing}} / \eta_{\text{proposed}}) * \text{run hours}$$

Where:

Existing therms = 1,972

$\text{MBH}_{\text{existing}}$ = weighted avg existing boiler input MBH = 59.079 MBH

run hours = 4,496 heating hours per year

η_{existing} = existing system thermal efficiency = 52.5%

η_{proposed} = proposed system thermal efficiency = 76.5%

$$\text{Annual kWhr savings} = \text{existing heater kWhr} = \sum (\text{kW}_{\text{heater}} * \text{bin hrs} * \text{bin load})$$

Where:

$\text{kW}_{\text{heater}}$ = 2 kW

bin hrs = number of hours associated with OA temperature bin (shown in table below)

bin load = percent heating load associated with OA temperature bin (shown in table 5.2.4.1 below)

Table 5.4.2.1:

Average OA temp	Bin hours	Heating plant loading
92.5	0	0%
87.5	0	0%
82.5	0	0%
77.5	0	0%

Exhibit C – Measurement and Verification
 Corning-Painted Post Area School District

72.5	0	0%
67.5	0	0%
62.5	0	0%
57.5	0	0%
52.5	411	25%
47.5	420	31%
42.5	636	38%
37.5	891	44%
32.5	664	50%
27.5	554	56%
22.5	457	63%
17.5	308	69%
12.5	94	75%
7.5	44	81%
2.5	10	88%
-2.5	6	94%
-7.5	1	100%
-12.5	0	100%
-17.5	0	100%
-22.5	0	100%

RTU savings are based on improved heating efficiency due to heat recovery mode. There are 2 RTUs, RTU-1 to replace the existing MAU and RTU-2 to replace the existing fan coil unit.

Annual RTU-1 therm savings = existing MAU therms – proposed therms = existing MAU therms + existing FCU therms – (RTU-1 therms + RTU-2 therms)

Where:

Existing therms = MAU usage + FCU usage = 2,169.4 therms = 3,155.5 therms + 1,183.3 therms

RTU-1 and RTU-2 therms = $\sum (1.08 * (RTU-1_{cfm} + RTU-2) * \Delta T * \text{bin heating hrs} + 4.5 * (H_{\text{mixed air}} - H_{\text{outside air}})_{\text{bin}} * \text{bin heating hours}) / \eta_{\text{boiler}} * 1 \text{ therm}/100,000 \text{ Btu}$

1.08 = constant = 1.08 Btu/(hr-degF-cfm)

RTU-1_{cfm} = 417 cfm

RTU-2_{cfm} = 755 cfm

$\Delta T = \text{degF setpoint} - \text{OAT} = 71 \text{degF} - \text{bin temp}$

$H_{\text{mixed air}} = \text{mixed air enthalpy}_{\text{bin}}$

$H_{\text{outside air}} = \text{outside air enthalpy}_{\text{bin}}$

4.5 = constant = 4.5 (Btu-lbm)/(hr- cfm)

$\eta_{\text{boiler}} = \text{proposed boiler combustion efficiency} = 92\%$

Exhibit C – Measurement and Verification
 Corning-Painted Post Area School District

Bin data in table 5.2.4.2 below:

Table 5.2.4.2:

OA Bin temp	Bin Htg hours	Bin enthalpy	Bin Clg hours	Mixed air enthalpy Btu/lbm
112.5	0	0.0	0	13.35
107.5	0	0.0	0	13.35
102.5	0	0.0	0	13.35
97.5	0	0.0	0	13.35
92.5	0	0.0	0	13.35
87.5	11	21.0	7	17.26
82.5	161	19.8	51	17.03
77.5	330	18.6	107	16.80
72.5	433	17.5	169	16.61
67.5	741	16.4	316	16.40
62.5	997	15.1	424	16.16
57.5	692	13.8	0	15.92
52.5	827	12.6	0	15.69
47.5	670	11.4	0	15.48
42.5	747	10.4	0	15.29
37.5	953	9.0	0	15.03
32.5	710	7.8	0	14.79
27.5	567	6.6	0	14.59
22.5	458	5.6	0	14.39
17.5	308	4.3	0	14.16
12.5	94	3.0	0	13.91
7.5	44	1.7	0	13.68
2.5	10	0.6	0	13.46
-2.5	6	-0.2	0	13.33
-7.5	1	-1.4	0	13.10
-12.5	0	0.0	0	13.35
-17.5	0	0.0	0	13.35
-22.5	0	0.0	0	13.35

Annual kWhr savings = existing heater kWhr + existing FCU kWhr + existing MAU kWhr –
 (proposed RTU-1 kWhr +RTU-2 kWhr)

Where:

$$\text{existing heater kWhr} = \sum(\text{kW}_{\text{heater}} * \text{bin hrs} * \text{bin load})$$

$$\text{kW}_{\text{heater}} = 2 \text{ kW}$$

Exhibit C – Measurement and Verification
Corning-Painted Post Area School District

bin hrs = number of hours associated with OA temperature bin (shown in table below)

bin load = percent heating load associated with OA temperature bin (shown in table below)

existing FCU kWhr = $\sum(\text{kW}_{\text{FCU}} * \text{bin hrs}) + \sum 1.08 * \text{cfmFCU} * \Delta T * \text{bin cooling hrs}$

$\text{kW}_{\text{FCU}} = 0.124 \text{ kW}$

RTU-1 and RTU-2 kWhr = $(\text{RTU-1}_{\text{fan kW}} + \text{RTU-2}_{\text{fan kW}}) * \text{run hrs} * \text{LF} + (\text{Btu}_{\text{cooling RTU-1}} + \text{Btu}_{\text{cooling RTU-2}}) / 3,412 \text{ Btu/kWhr} / \text{COP}$

$\text{RTU-1}_{\text{fan kW}} = 3.73 \text{ kW}$

$\text{RTU-2}_{\text{fan kW}} = 2.238 \text{ kW}$

Run hours = 3,763 hrs

LF = 0.4

$\text{Btu}_{\text{cooling RTU-1}} + \text{Btu}_{\text{cooling RTU-2}} = 4,969,925 \text{ Btu} = 3,756,872 \text{ Btu (sensible)} + 1,213,052 \text{ Btu (latent)}$

3,412 Btu/kWhr = constant

COP = 3.14

5.2.5 Boiler Room Pump Replacements

Savings are based on the reduced pump speed (and pump motor kW) during shoulder month heating operation.

Annual kWhr savings = annual existing kWhr during heating season - annual proposed kWhr during heating season = $\sum kW_{existing} * hrs_{bin\ temp} - \sum kW_{bin\ temp} * hrs_{bin\ temp}$;

$kW_{existing}$ = existing measured pump kW

$hrs_{bin\ temp}$ = hours per temperature bin for Elmira NY heating season

$kW_{bin\ temp}$ = proposed pump kW associated with temperature bin for Elmira NY heating season

5.2.6 Insert Gregg ES window Information

Scope of work:

- The following windows will be replaced in Gregg Elementary school
 - Connecting hallway
 - This is the section of windows that faces north and runs between the renovated east wing and un-renovated west wing
 - Four (4) cafeteria windows
 - The north facing entry on Maple St
 - The west facing entry on Flint Ave
 - Eight classrooms in the northwest wing (400 wing). All the windows in these 8 classrooms will be replaced

Savings are based on improved insulation value and reduced heat conduction through the windows.

Annual therm savings = Existing therms - proposed therms = $\sum (SF_{section} * k_{section} * \Delta T_{bin} * bin\ hours)_{existing} - \sum (SF_{section} * k_{section} * \Delta T_{bin} * bin\ hours)_{proposed}$

Where:

$SF_{section}$ = window section square footage from Table 5.2.6.1 below

$k_{section}$ = conductivity Table 5.2.6.1 below for existing and proposed conductivity values

ΔT_{bin} = space setpoint temperature – bin temperature = 71 degF – bin temperature from Table 5.2.6.2 below

Bin hours = bin heating hours from Table 5.2.6.2 below

Table 5.2.6.1:

Location	Area (section) SF	Existing conductivity Btu/sf/degF/hr	Proposed conductivity Btu/sf/degF/hr
Connector hallway	272.3	0.90	0.38
Flint door	75.2	1.10	0.38
n wing CR windows	506.0	0.85	0.38
n wing CR insulated panels	411.1	0.85	0.38
Maple Ave exit door	100.0	0.85	0.38

Table 5.2.6.2:

OA Bin temp	Bin heating hours
112.5	0
107.5	0
102.5	0
97.5	0
92.5	0
87.5	0
82.5	0
77.5	0
72.5	0
67.5	0
62.5	0
57.5	0
52.5	197
47.5	171
42.5	211
37.5	264
32.5	179
27.5	147
22.5	110
17.5	70
12.5	14
7.5	8
2.5	1
-2.5	2
-7.5	0
-12.5	0
-17.5	0
-22.5	0
Totals	1,374

5.3 Option B – Measured Capacity, Measured Consumption – This is not used

5.4 Option C – Whole Building or Main Meter Comparison – This is not used

Article 6: Baseline Data

6.1 The year(s) selected as the Baseline Period starts on July xxx and ends on June xxx. Table 6.1 outlines the utility consumption that occurred during this Baseline Period. This Baseline Period’s Facility utility consumption will be used as the reference for comparing the Facility’s utility consumption during the Performance Guarantee Period in order to determine the Annual Realized Savings.

Exhibit C – Measurement and Verification
 Corning-Painted Post Area School District

Table 6.1 – Baseline Utility Consumption

	Usage\Month	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Total
High School	Peak kWhr	145,827	142,967	178,350	155,000	158,372	172,853	193,452	169,718	141,938	128,306	131,569	128,927	1,847,279
	Off peak kWhr	114,048	129,067	126,005	-143,888	152,594	133,675	141,074	132,594	118,001	128,345	119,610	113,083	1,264,208
	Peak kW	619	667	957	800	724	763	1,008	881	785	739	632	626	9,202
	Off peak kW	403	404	551	570	624	574	628	503	435	385	400	484	5,960
	Therms	52,460	36,764	11,112	8,556	5,024	4,743	9,150	24,113	41,029	51,317	61,451	53,146	358,865
	Usage\Month	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Total
Middle School	Peak kWhr	102,641	114,308	125,000	106,244	109,444	120,000	114,769	97,402	89,412	89,705	88,598	90,000	1,247,523
	Off peak kWhr	78,044	76,833	-125,000	103,782	94,609	-120,000	76,715	87,146	76,526	76,167	81,309	-90,000	416,131
	Peak kW	446	577	619	493	472	632	632	476	475	441	436	435	6,132
	Off peak kW	335	366	378	445	390	357	450	324	294	292	285	288	4,206
	Therms	16,865	11,203	2,606	1,869	1,192	1,145	1,889	7,110	13,672	14,357	23,389	19,501	114,798
	Usage\Month	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Total
Admin	Peak kWhr	56,400	27,360	32,040	29,040	35,280	31,320	28,320	29,400	28,320	27,120	27,360	41,880	393,840
	Peak kW	148	94	112	113	103	114	96	78	72	76	78	112	1,194
	Therms	3,843	1,343	1,113	155	59	640	1,261	2,210	6,543	8,036	5,315	4,763	35,281
	Usage\Month	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Total
Bus Garage	Therms	2,023	631	727	684	155	175	150	151	455	922	1,071	1,664	8,808
	BG 53 Peak kWhr		6,960		7,704		7,188		7,512		7,656		7,932	44,952
	Usage\Month	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	
	BG69 Peak kWhr	430	343	330	350	362	441	470	569	563	556	491	471	5,376
BG80 Peak kWhr	533	576	526	642	555	595	538	612	519	628	527	1,461	7,712	
	Usage\Month	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Total
Stadium	Peak kWhr	5,360	6,160	4,960	4,280	4,000	5,040	5,320	5,360	5,160	9,960	360	6,000	61,960
	Peak kW	20	30	22	21	13	18	24	22	19	13	1	20	223
	Therms	1,466	550	549	89	72	112	178	288	2,588	1,491	3,132	2,034	12,550

6.2 The operating practices during the Baseline Period determine the utility consumption shown in Table 6.1. This data indicates the operating characteristics that were in effect during the Baseline Period. The Guaranteed Savings provided under this Agreement are based on the efficiencies gained by implementing the Work and implementing the Contracted Baseline in Article 8 of this Exhibit C. Tables 6.2.1 and 6.2.2 outline the building Baseline operating hours and Baseline operating temperatures, respectively. The list below the tables outlines the Baseline operating parameters for specific equipment.

Table 6.2.1 – Baseline Operating Hours (*Insert OWNER specific schedules*)

	Day of Week	Occupied Run Hours	Unoccupied Run Hours	Occupied Run Times From/to	
HS Weekday	General bldg	10:15	13:45	7:15	17:30
	Aud/café	16:00	8:00	6:30	22:30
	AHU07	11:00	13:00	6:30	17:30
	Classrooms	10:15	13:45	7:15	17:30
	Gym locker rooms	15:15	8:45	7:15	22:30
	Kitchen MAU	17:30	6:30	5:00	22:30
	Saturday	0	24	N/A	N/A
	Sunday	0	24	N/A	N/A
	Holiday	0	24	N/A	N/A

**Administration
Bldg**

Day of Week	Occupied Run Hours	Unoccupied Run Hours	Occupied Run Times From/to	
Monday	11:30	12:30	6:30	18:00
Tuesday	11:30	12:30	6:30	18:00
Wednesday	11:30	12:30	6:30	18:00
Thursday	11:30	12:30	6:30	18:00
Friday	11:30	12:30	6:30	18:00
Saturday	0	24	N/A	N/A
Sunday	0	24	N/A	N/A
Holiday	0	24	N/A	N/A

Bus Garage

Day of Week	Occupied Run Hours	Unoccupied Run Hours	Occupied Run Times From/to	
Monday	12:30	11:30	4:30	17:00
Tuesday	12:30	11:30	4:30	17:00
Wednesday	12:30	11:30	4:30	17:00
Thursday	12:30	11:30	4:30	17:00
Friday	12:30	11:30	4:30	17:00
Saturday	0	24	N/A	N/A
Sunday	0	24	N/A	N/A
Holiday	0	24	N/A	N/A

Table 6.2.2 – Baseline Operating Temperatures

Day of Week	Occupied Heating Temperatures	Unoccupied Heating Temperatures	Occupied Cooling Temperatures	Unoccupied Cooling Temperatures
Monday	71	60	73	78
Tuesday	71	60	73	78
Wednesday	71	60	73	78
Thursday	71	60	73	78
Friday	71	60	73	78
Saturday	N/A	60	N/A	78
Sunday	N/A	60	N/A	78
Holiday	N/A	60	N/A	78

General Equipment Baseline Operating Parameters (unless specified otherwise in the Scope of Work and Services, Exhibit A, Article 1 or Exhibit C, Article 4). All hours are Monday through Friday.

- Current lighting operating hours for individual areas are indicated in Exhibit A, Appendix 1-Lighting Retrofit Schedule
- Current stadium lighting operating hours are indicated in Exhibit A, Appendix 2-Stadium Lighting Schedule
- Current operating times and daily run time during weekdays for specific HVAC units are listed in Table 5.2.3

Table 6.2.3 – Baseline Operating Hours for Specific HVAC Units

Location	Unit	Service	Occupied		Run Time per Day
			Start Time	Stop Time	
HS	AHU-1&2	HS gym	0:00	24:00:00	24:00:00
HS	ERV 1,2,3	Areas H, G, I	0:00	24:00:00	24:00:00
HS	AHU-3	HS aux gym	0:00	24:00:00	24:00:00
HS	AHU-8	Auditorium	0:00	24:00:00	24:00:00
HS	AHU-7	Cafeteria	0:00	24:00:00	24:00:00
HS	AHU-6	Gym wing lobby	0:00	24:00:00	24:00:00
HS	AHU-1	Library	0:00	24:00:00	24:00:00
HS	AHU-12	Band C207	0:00	24:00:00	24:00:00
HS	AHU-13	Instr. Music C203	0:00	24:00:00	24:00:00
HS	AHU-14	Vocal music C206	0:00	24:00:00	24:00:00
MS	Gym	Gym	0:00	24:00:00	24:00:00
MS	AHU-4	MS aux gym	0:00	24:00:00	24:00:00
MS	AHU-8	Auditorium	0:00	24:00:00	24:00:00
MS	AHU-7	Cafeteria	0:00	24:00:00	24:00:00
MS	AHU-6	Gym balcony and bleacher	0:00	24:00:00	24:00:00

Article 7: Utility Rate Structures and Escalation Rates

7.1 Utility costs used for Savings calculations will be based on the utility rates and rate escalation percentages, as provided in the table(s) below. Each escalation rate will be applied annually to the utility rate.

Table 7.1 – Utility Rate Structure and Escalation Rates

Building	Blended Electric Energy (\$/Blended kWh)	Incremental Electric Energy (\$/Incremental kWh)	Electric Demand (\$/kW)	Natural Gas (\$/Therm)	Rate Escalation
Carder ES	\$0.0807	\$0.0631	\$5.8000	\$0.7179	2%
Erwin Valley ES	\$0.0870	\$0.0658	\$5.8000	\$0.7259	2%
Gregg ES	\$0.0862	\$0.0653	\$5.8000	\$0.7025	2%
Severn ES	\$0.0795	\$0.0628	\$5.8000	\$0.7466	2%
Smith ES	\$0.0848	\$0.0651	\$5.8000	\$0.7003	2%
Winfield ES	\$0.0813	\$0.0637	\$5.8000	\$0.7124	2%
HS	\$0.0667	\$0.0504	\$5.9655	\$0.6085	2%
MS	\$0.0659	\$0.0506	\$5.6917	\$0.3903	2%
Admin	\$0.0843	\$0.0667	\$5.8000	\$0.7448	2%
Bus Garage	\$0.1410	\$0.1077	\$0.0000	\$0.7556	2%
Stadium	\$0.0940	\$0.0729	\$5.8000	\$0.7227	2%

Article 8: Contracted Baseline Data

8.1 The following tables detail the Facility operating parameters that are required to be implemented on the Guarantee Date or on such time as agreed upon by the Parties. This specific configuration of Facility operating parameters is the Contracted Baseline and failure of the OWNER to maintain the Contracted Baseline may result in a Material Change which may require a modification of the Performance Guarantee pursuant to Article 4 of the Agreement. Tables 8.1.1 and 8.1.2 outline the building Contracted Baseline operating hours and Contracted Baseline operating temperatures, respectively. The list below the tables outlines the Contracted Baseline operating parameters for specific equipment.

Table 8.1.1 – Contracted Baseline Operating Hours

High School/Middle School

Day of Week	Occupied Run Hours	Unoccupied Run Hours	Occupied Run Times
Monday	9	15	6:00-15:00
Tuesday	9	15	6:00-15:00
Wednesday	9	15	6:00-15:00
Thursday	9	15	6:00-15:00
Friday	9	15	6:00-15:00
Saturday	0	24	N/A
Sunday	0	24	N/A
Holiday	0	24	N/A

Day of Week	Occupied Run Hours	Unoccupied Run Hours	Occupied Run Times
Monday	11	13	6:00-17:00
Tuesday	11	13	6:00-17:00
Wednesday	11	13	6:00-17:00
Thursday	11	13	6:00-17:00
Friday	11	13	6:00-17:00
Saturday	0	24	N/A
Sunday	0	24	N/A
Holiday	0	24	N/A

Table 8.1.2 – Contracted Baseline Operating Temperatures

Day of Week	Occupied Heating Temperatures	Unoccupied Heating Temperatures	Occupied Cooling Temperatures	Unoccupied Cooling Temperatures
Monday	71	60	73	78
Tuesday	71	60	73	78
Wednesday	71	60	73	78
Thursday	71	60	73	78
Friday	71	60	73	78
Saturday	N/A	60	N/A	78
Sunday	N/A	60	N/A	78
Holiday	N/A	60	N/A	78

General Equipment Contracted Baseline Operating Parameters (unless specified otherwise in the Scope of Work and Services, Exhibit A, Article 1 or Exhibit C, Article 6)

- Post-retrofit lighting operating hours for individual areas are indicated in Post-retrofit A, Appendix 1-Lighting Retrofit Schedule
- Post-retrofit operating times and daily run time during weekdays for specific HVAC units are listed in Table 8.1.3

Table 8.1.3 – Contracted Baseline Operating Hours for Specific HVAC Units

Location	Unit	Service	Occupied		Run Time per Day
			Start Time	Stop Time	
HS	AHU-1&2	HS gym	7:00	22:30	15:30:00
HS	ERV 1,2,3	Areas H, G, I	7:00	22:30	15:30:00
HS	AHU-3	HS aux gym	7:00	22:30	15:30:00
HS	AHU-8	Auditorium	6:30	22:30	16:00:00
HS	AHU-7	Cafeteria	6:30	22:30	16:00:00
HS	AHU-6	Gym wing lobby	7:00	22:30	15:30:00
HS	AHU-1	Library	7:15	17:30	10:15:00
HS	AHU-12	Band C207	7:15	17:30	10:15:00
HS	AHU-13	Instr. Music C203	7:15	17:30	10:15:00
HS	AHU-14	Vocal music C206	7:15	17:30	10:15:00
MS	Gym	Gym	6:30	17:30	11:00:00
MS	AHU-4	MS aux gym	6:30	17:30	11:00:00
MS	AHU-8	Auditorium	6:30	17:30	11:00:00
MS	AHU-7	Cafeteria	6:30	17:30	11:00:00
MS	AHU-6	Gym balcony and bleacher	6:30	17:30	11:00:00

This Exhibit C, is attached to and made a part of the Agreement between DAY AUTOMATION and the OWNER .

OWNER : CORNING-PAINTED POST AREA SCHOOL DISTRICT
 Signature: 
 Printed Name: Michael K. Guralski
 Title: Superintendent
 Date: Feb 23, 2020

DAY AUTOMATION:
 Signature: 
 Printed Name: Steve Haskin
 Title: Energy Svc Mgr.
 Date: 2/14/20