

FINAL AIA Document A101 – 2007

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

AGREEMENT made as of the 23 day of September in the year 2020
(In words, indicate day, month and year.)

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

CENTRAL ISLIP UNION FREE SCHOOL DISTRICT
50 Wheeler Road
Central Islip, New York 11722
Tele: 631-348-5000
e-mail: mprovidente@centralislip.k12.ny.us

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

ENERGY SYSTEMS GROUP, LLC
9877 Eastgate Court
Newburgh, Indiana 47630
Tele: (812)492-3722
e-mail: dshell@energysystemsgroup.com

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

Central Islip Union Free School District ("School District" or "Owner")
District-wide Implementation of Energy Conservation Measures (hereafter "E.C. Measures")
Construction and/or Installation of Energy Related Upgrades to Multiple Buildings & Sites
Central Islip, New York 11722

The Architect: (for purposes of this Agreement the terms "Architect" and "Engineer" will be used interchangeably,
as one in the same)
(Name, legal status, address and other information)

ECG Engineering P.C. ("ECG Engineering" or "ECG")
811 West Jericho Turnpike, Suite 202W
Smithtown, New York 11787
Attn: Kendra McQuilton

Tele: (631) 360-0006
e-mail: kendra@ecgengineers.com

The Owner and Contractor agree as follows.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement with Rider "T" and Exhibits annexed thereto, Conditions of the Contract (General Conditions (AIA A-201 (2007 ED.), Supplementary General Conditions, Sections 2 through 6 and Appendices 1 through 5 of the Comprehensive Energy Audit dated March 1, 2020 (referred to as "CEA"), Owner's Request for Proposal dated May 30, 2019 (Section IV(C) thereof), Contractor's Response to Owner's Request for Proposal dated May 30, 2019 : Section A-1 thereof), Addenda issued prior to execution of this Agreement, and other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

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.

- (i) Preconstruction Services: Contractor has performed a Comprehensive Energy Audit ("CEA") of the School District's Properties and Facilities, dated March 1, 2020, as set forth in Exhibit A. Promptly following the execution of this Agreement by all parties, Contractor will consult with Owner, and upon Owner's authorization, Contractor will fully cooperate with the Owner's designated professional engineers in coordinating the design and engineering services to be performed by the Engineers. The services to be performed by the Owner's designated Engineers shall include: (i) the preparation of plans, drawings and specifications required by the New York State Education Department ("NYSED") in order to (a) define the scope of the Project, and (b) obtain NYSED approval of the project and all necessary and appropriate NYSED building permits and related documentation; and (ii) preparation of such applications, plans, specifications and documentation necessary to obtain NYSED Building Aid for the Project constituting either a minimum of Eighty (80%) percent of the full Project construction costs, or a minimum of Ninety (90%) percent of full Project construction costs should Owner elect, in its sole discretion, to seek school district voter approval of the Project. Owner has designated and contracted with ECG Engineering LLC as the Engineer of record to perform the aforesaid professional services, subject to Owner's right to terminate and replace such Engineers. Contractor will coordinate and fully cooperate with Engineer and Owner in the development of the scope of the Project. The Engineer's fee for such services shall equal Five and one-half (5.5%) percent of the Contract Sum, and such engineering costs shall be included in the Contract Sum, with disbursement to Engineers through periodic payments approved by Owner and paid by Financing Agent.
- (ii) Construction Work: Implementation: Except as otherwise provided herein, upon occurrence of (a) the issuance of NYSED approval of NYSED Building Aid which together with stipulated financing

the parties agree in writing is sufficient for the full funding of the Project, and which sums are set forth in Section 2 of the CEA dated March 1, 2020; (b) the delivery to Contractor of Owner's Notice to Proceed; and (c) Owner's receipt of sufficient evidence of the funding of an Escrow Account pursuant to the underlying financing Lease (as defined in Section "iii" hereunder) with the immediate availability of such financed funds sufficient for payment of the Contract Sum, Contractor shall thereupon expeditiously perform the following:

- Submit to Owner all required proofs of insurance coverage as set forth in Article "11" of the Supplementary General Conditions to this Construction Agreement
- Submit to Owner all required Surety Performance and Payment Bonds as set forth in Article "11" of the Supplementary General Conditions to this Construction Agreement
- Following submission of required proofs of Insurance and Surety Bonds, as aforesaid, Contractor shall immediately commence performance of construction activities, and timely furnish all labor, materials and equipment necessary to fully and completely initiate and complete all contractually required Work, including the installation of energy conservation measures ("ECMs") as set forth in Exhibit A.

Contractor shall be responsible for all construction means, methods, techniques and sequences. Contractor shall enter into a schedule for construction work with Owner and its Engineers, and will coordinate its activities so as to not interfere with school operations and hours of classroom instruction, as more particularly set forth in Exhibit E.

- (iii) Financing and Costs Evaluation Project Contingencies: Owner will not be required to proceed with the Construction Project, and this Contract shall be deemed null and void, and of no force or effect whatsoever, should Owner determine, in its sole discretion, that (a) the financing terms and conditions established by the financing entity are not appropriate for the School District or are otherwise not in the best interest of the School District, (b) Owner is unable to complete (close) financing for the Project, or (c) projected or granted NYSED Building Aid will be inadequate for construction costs and constructed related costs. Upon Owner's written notice of termination of this Agreement the parties shall have no further obligations, nor shall either party be liable for any costs or damages incurred by the other party as a result of the Owner's termination of this Agreement pursuant to this paragraph "iii".

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date fixed in a notice to proceed provided by Owner to Contractor. If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

« »

§ 3.2 The Contract Time shall be measured from the date specified in the notice to proceed.

§ 3.3 The Contractor shall achieve
Substantial Completion of the entire Work
not later than four hundred twenty-five
(425) calendar days from the date specified
in the notice to proceed,

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

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Eight Million Six Hundred Fifty Five Thousand Nine Hundred Fifty Two Dollars (\$8,655,952.00), subject to additions and deductions as provided in the Contract Documents, including credits to Owner to be paid from the Contract Sum as Owner directs in an amount equal to Five and one-half percent (5.5%) of the Contract Sum for purposes of Owner's payment of Engineering fees and disbursements to Project Engineers, ECG Engineering P.C. through the financing entity's designated Escrow disbursement agent.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

«None. »

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
None.		

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
None.	

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 30 days after the Architect receives the Application for Payment.

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

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

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007 and the Supplementary General Conditions.

§ 5.1.8 Intentionally Omitted.

§ 5.1.9 Intentionally Omitted.

§ 5.2 FINAL PAYMENT

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007 and the provisions of Articles "9" & "12" of the Supplementary General Conditions, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's Final Payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment and Contractor's Final Completion of Work, and the following:

Before making the final payment provided by Article 5 herein, the Contractor shall supply the following documents, in proper form:

- A. Consent of the Surety Company to Final Payment.
- B. General Release from Contractor running in favor of the Board of Education of the Central Islip Union Free School District.
- C. Affidavit of the Contractor listing all Subcontractors and Suppliers utilized by the Contractor on this Project.
- D. Waivers of lien from each of the Subcontractors and suppliers so listed, running in favor of the Board of Education of the Central Islip Union Free School District.
- E. AIA G-706 & G-706A Affidavits of the Contractor that all Subcontractors, Suppliers and Manufacturers have been paid in full.
- F. Contractor's Warranty as required under the terms of the Specifications
Subcontractors', suppliers' and Manufacturers' warranties as required under the terms of the Specifications
- G. As-built Drawings and operations manuals as required under the terms of the Specifications.
- H. Two Year Maintenance Bond as required pursuant to the terms of the Specifications
- I. Guaranteed Energy Costs Savings Agreement and Undertakings in the form set forth in Section "6" of Exhibit A and Article "3.5.1" of the Supplementary General Conditions of Construction Contract
- K. Contractor's release whereby the Contractor certifies that all payrolls, material bills, and other indebtedness connected with the work have been paid, and in consideration of all prior payments and Final Payment, the Contractor releases and forever discharges the Owner from all claims, demands, obligations and liabilities of every kind and nature arising out of or relating to the Contract
- L. Certification as to full compliance with prevailing wages and payroll certifications as are required under applicable New York State Law
- M. Proof of continuation of Insurance coverage as required pursuant to Contract provisions

« »

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Construction Manager (or the Engineer, if the Owner does not designate a Construction Manager) will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201– 2007 Ed., unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

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

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

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

[«»] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[«X»] Litigation in a court of competent jurisdiction

[«»] Other *(Specify)*

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 A201–2007 and the Supplementary General Conditions.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007 and the Supplementary General Conditions.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents and the Supplementary General Conditions.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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

One-half of one percent (.5%) per month»

§ 8.3 The Owner's representative:

(Name, address and other information)

Owner's Architect/Engineer shall act as Owner's Construction Manager

ECG Engineering, P.C. (OR A DESIGNATED CONSTRUCTION MANAGER)

811 West Jericho Turnpike, Suite 202W

Smithtown, New York 11787

Tele: 631-360-0006

e-mail: kendra@ecgengineers.com

»

§ 8.4 The Contractor's representative:

(Name, address and other information)

Steven W. Spanbauer
President
9877 Eastgate Court
Newburgh, Indiana 47630
Telephone: (812) 471-5000
sspanbauer@esg.email

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

§ 8.6 Other provisions:

The following statutory requirements shall be applicable to this Agreement:

1. The provisions of New York Energy Law §§9-101 through 9-103 regarding energy performance contracts shall apply to this Agreement.
 2. The Project includes the provision of energy services including the installation, maintenance or management of energy systems or equipment to improve energy efficiency, or produce energy, and to the extent applicable, in exchange for a portion of the energy savings or revenues.
 3. The duration of the energy performance contract shall not exceed the lesser of eighteen years or the reasonably expected useful life of the equipment subject to such contract.
 4. As required under applicable law and regulations, 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."
 5. This Project shall have been procured by issuing and advertising a written request for proposals in accordance with policies, procedures or guidelines that the agency, municipality or public authority has adopted pursuant to applicable state laws.
 6. This Project is also subject to the procedures and Regulations of the Commission of Education, Section 155.20 (Energy performance contracts, 8 NY ADC 155.20), current with amendments included in the New York State Register, XXXIX, Issue 7 dated February 15, 2017.
- « »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Supplementary General Conditions		June 18, 2020	

§ 9.1.4 The Specifications:

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

- «
- COMPREHENSIVE ENERGY AUDIT Sections 3 through 6 and Appendices 1 through 5 dated March 1, 2020, (As modified identifying work)
 - Post-Construction Training, Performance Verification & Maintenance Services Listing (from CEA Sect. VI (SEE))
 - Supplementary General Conditions to Construction Agreement

§ 9.1.5 The Drawings:

LIST HERE

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

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
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§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 Table of Contents of Listed documents

«TO BE LISTED HERE »

- .2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

- RIDER “I” attached and incorporated by reference herein
- EXHIBIT “A”: COMPREHENSIVE ENERGY AUDIT (“CEA”)
- EXHIBIT “B”: Opinion of Owner’s Counsel
- EXHIBIT “C”: STATE SPECIFIC STATUTORY REQUIREMENTS FOR NEW YORK AGENCIES, MUNICIPALITIES AND PUBLIC AUTHORITIES
- EXHIBIT “D”: Wage and Hours Provisions; Prevailing Wage Determination
- EXHIBIT “E”: Coordination of Construction Activities with School Operations
- EXHIBIT “F”: Agreement between Owner and ECG

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and surety bonds as set forth in Article 11 of AIA Document A201–2007 and as modified in Article “11” of the Supplementary General Conditions.

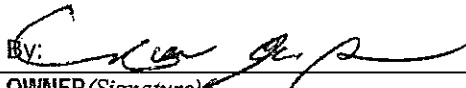
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

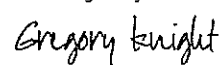
Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Performance Bond	Per Article “11” Supplementary General Conditions
Labor & Materials Payment Bond	Per Article “11” Supplementary General Conditions

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

BOARD OF EDUCATION
CENTRAL ISLIP UNION FREE SCHOOL DISTRICT

ENERGY SYSTEMS GROUP, LLC

BY: 
OWNER (Signature)

DocuSigned by:
By: 
CONTRACTOR (Signature)

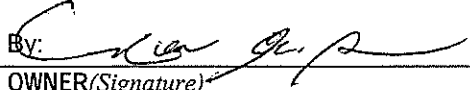
Norman A. Lattin, BO President
(Printed name and title)

Gregory Knight EVP
(Printed name and title)

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

BOARD OF EDUCATION
CENTRAL ISLIP UNION FREE SCHOOL DISTRICT

ENERGY SYSTEMS GROUP, LLC

By: 
OWNER (Signature)

By: _____
CONTRACTOR (Signature)

Norman A. Wilgert, BO President
(Printed name and title)

(Printed name and title)

AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Central Islip Union Free School District ("School District" or "Owner")
District-wide Implementation of Energy Conservation Measures (hereafter "E.C. Measures")
Construction and/or Installation of Energy Related Upgrades to Multiple Buildings & Sites
Central Islip, New York 11722

THE OWNER:

(Name, legal status and address)

CENTRAL ISLIP UNION FREE SCHOOL DISTRICT
50 Wheeler Road
Central Islip, New York 11722
Tele: 631-348-5000

e-mail: mprovidente@centralislip.k12.ny.us

THE ARCHITECT:

(Name, legal status and address)

ECG Engineering P.C. ("ECG Engineering" or "ECG")
811 West Jericho Turnpike, Suite 202W
Smithtown, New York 11787
Attn: Kendra McQuilton

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.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by 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 and certify termination of the Agreement under Section 14.2.2.

§ 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.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 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.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

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portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.3 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.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, 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 reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

§ 3.1.3 The Contractor shall not be relieved of 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.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 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 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These 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 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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

§ 3.3 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 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.

§ 3.4 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.

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

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

§ 3.5 WARRANTY

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.

§ 3.6 TAXES

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 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed 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

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

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submittals. These shall be available to the Architect and shall be 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, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect 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.

§ 3.12.5 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.

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

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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, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 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, and 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 and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect 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 such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, 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, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

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party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 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.

§ 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.

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

§ 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 until the date the Architect issues the final Certificate for Payment. 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, except as provided in Section 3.3.1.

§ 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect 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 FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's 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 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

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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, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect 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.

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

§ 4.2.14 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.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

§ 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.

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§ 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

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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.

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§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

§ 9.4 CERTIFICATES FOR PAYMENT

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The 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 also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 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 material or equipment suppliers to whom the

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Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate 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, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written 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 shut-down, 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.

§ 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.

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

§ 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.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor 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 in order to determine and record the condition of the Work.

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, 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 terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's 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.

§ 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 and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

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Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 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 and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect 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; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 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.

§ 10.2 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 or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

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

§ 10.3.3 To the fullest extent permitted by law, the Owner 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 materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S 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 that 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;
- .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 filed with the Owner 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 on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional

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insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

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

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

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

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

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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§ 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year 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 2.4.

§ 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.

§ 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, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 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

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sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect 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 13.5.3, shall be at the Owner's expense.

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

§ 13.5.5 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.

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 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 final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the 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; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

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§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .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.

§ 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, 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 as described in 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 written 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 executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201® – 2007

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

Note This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:07:24 CT on 07/22/2020.

PAGE 1

Central Islip Union Free School District ("School District" or "Owner")
District-wide Implementation of Energy Conservation Measures (hereafter "E.C. Measures")
Construction and/or Installation of Energy Related Upgrades to Multiple Buildings & Sites
Central Islip, New York 11722

...

(Name, legal status and address)
CENTRAL ISLIP UNION FREE SCHOOL DISTRICT
50 Wheeler Road
Central Islip, New York 11722
Tele: 631-348-5000
e-mail: mprovidente@centralislip.k12.nv.us

...

(Name, legal status and address)
ECG Engineering P.C. ("ECG Engineering" or "ECG")
811 West Jericho Turnpike, Suite 202W
Smithtown, New York 11787
Attn: Kendra McQuilton

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:07:24 CT on 07/22/2020 under Order No. 1704220870 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

SECTION 00500 - SUPPLEMENTARY GENERAL CONDITIONS

ARTICLE 1: GENERAL PROVISIONS: add the following paragraphs:

1.1.1. Delete the final sentence of Section 1.1.1 of the General Conditions, "Unless specifically . . . relating to bidding requirements."

Add the following sentence to the end of Section 1.1.1 of the General Conditions:

The Contract Documents also include the AIA A101 Construction Agreement ("Agreement") and Rider "I" thereto, General Conditions of the Contract for Construction, AIA Document A201 (2007 Edition)("General Conditions"), these Supplementary General Conditions ("Supplementary Conditions"), Owner's Request for Proposal, Sections "2 through 6 and Appendices 1 through 5" of the Comprehensive Energy Audit issued by Contractor and dated March 1, 2020 ("CEA"), Contractor's Proposal as accepted by Owner, Performance and Payment Bonds, Addenda, and the final approved Progress Schedule.

1.1.4 Delete Section 1.1.4 of the General Conditions, and add a new Section 1.1.4, as follows:

The Project is the total construction of which the Work performed under the Contract Documents may be the whole, or a part thereof, as may be defined in the Specifications, and which may include construction by the Owner or by separate contractors.

1.1.7 Add the following sentence to the end of Section 1.1.7 of the General Conditions:

The term "Architect" as set forth throughout the AIA A201 (General Conditions (2007 Ed.) and these Supplementary Conditions shall refer to the Owner's designated "Engineer" or other Engineer or Architect duly designated by Owner during the Contract term.

1.1.9 Add the following new Section 1.1.9 to the General Conditions:

The American Institute of Architects AIA Document A201, 2007 Edition entitled "General Conditions of the Contract for Construction" constitute the General Conditions of the Contract. The Supplementary General Conditions contained herein are amendments, deletions and additions to the General Conditions for the specific requirements of the Central Islip Union Free School District: District-wide Implementation of Energy Conservation Measures ("E.C. Measures") Construction and/or Installation of Energy Related Upgrades to Multiple Buildings & Sites.

1.1.10 Add the following new Section 1.1.10 to the General Conditions:

The following A.I.A. forms will be used in the administration of this Contract:

- G701 - 2001 Change Order
- G702 - 1992 Application and Certificate for Payment
- G703 - 1992 Continuation Sheet for G702
- G704 - 2000 Certificate of Substantial Completion
- G709 - 2001 Work Changes Proposal Request
- G711 - 2018 Architect's Field Report
- G705 - 2001 List of Subcontractors

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1.1.10.1 Add the following new Subsection 1.1.10.1 to the General Conditions:

These Supplementary Conditions shall modify, change, delete from or add to the General Conditions. To the extent of any conflict between the General Conditions and these Supplementary Conditions, these Supplementary Conditions shall be controlling. All other provisions of the General Conditions shall remain in force.

1.1.11 Add the following new Section 1.1.11 to the General Conditions:

"Furnish" shall mean purchase and/or fabricate and deliver to job site or other location when so designated.

1.1.12 Add the following new Section 1.1.12 to the General Conditions:

"Install" shall mean build-in, mount-in position, connect or apply the specified material.

1.1.13 Add the following new Section 1.1.13 to the General Conditions:

All Work shall be performed by the Contractor or its Subcontractors as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written addendum to the Contract in accordance with applicable provisions of the General Conditions and these Supplementary General Conditions.

1.1.14 Add the following new Section 1.1.14 to the General Conditions:

Where "As Directed", "As Allowed", "Acceptance" or words of similar import are used, it shall be understood that the directive, allowance, approval or acceptance of the Architect is intended, except where otherwise stated.

1.1.15 Add new paragraph: "KNOWLEDGE"

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 discover (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising care, skill, and diligence required of the Contractor by the Contract Documents."

Add the following new Section 1.1.15 to the General Conditions:

"Alternate" shall mean a variation in Contract requirements on which a separate price is to be received by the Owner. If the Alternate is accepted in writing by the Owner, the variation is then a part of the Contract and the amount of money quoted shall be added to or deleted from the Contract Sum."

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1.2.2.1

Add the following new Subsection 1.2.2.1 to the General Conditions: "Contractor represents that its investigation of the site was performed in detail and was sufficient to disclose the condition of the Project Site and all improvements thereon (excluding latent defects, concealed conditions and subsurface conditions), and the conditions under which the Work is to be performed, including, without limitation (i) the location, condition, layout and nature of the Project Site and surrounding areas; (ii) anticipated labor supply costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues pertinent to the performance of the Work."

1.2.3

Add the following to the end of Section 1.2.3 of the General Conditions:

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

1. Modifications issued after execution of the Agreement.
2. The Agreement Between the Owner and the Contractor.
3. Addenda issued prior to the execution of the Agreement, with those of later dates having precedence over those of earlier dates.
4. Special provisions or requirements (if any).
5. The Supplementary Conditions.
6. The General Conditions.
7. Drawings and Specifications.

After execution of the Agreement and during the course of the work should any ambiguities, discrepancies, omissions, or apparent errors be found on the drawings or in the specifications approved by NYS SED building permit to which the Contractor has failed to call attention, then the intention of the contract documents is to be interpreted by the Architect.

The Architect's decision as to the intent shall be final, and the Contractor hereby agrees to carry out the work in accordance with the decision of the Architect.

If necessary measurements are missing or Work specified or shown in the Contract Documents is obviously incorrect or impossible to execute, or figures fail to check, the Contractor shall call these facts to the attention of the Architect.

1.2.4

Add the following new Section 1.2.4 to the General Conditions:

The sections of the Specification are for convenience of reference and do not necessarily set limits of subcontractors and shall not operate to make the Owner an arbiter to establish such limits.

Figured Dimensions--Drawings in general are made to scale, but all working dimensions shall be taken from the figured dimensions or by actual measurements at the job and in no case by scaling. The Contractor shall study and compare all Drawings and verify all figures before laying out the Work for construction and shall be responsible for any and all errors in his Work which might have been avoided by doing so. Whether or not an error is believed to exist, no deviation from the drawings and dimensions given thereon shall be made unless written approval of the Architect is obtained

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1.2.5 Add the following new Section 1.2.5 to the General Conditions:

Conflicts - Where discrepancies exist between Drawings and Specifications, or necessary measurements are missing, or Work specified or shown on Drawings is obviously incorrect or impossible to execute, or figures fail to check, the Contractor shall call these facts to the attention of the Architect. No work shall start until all of these ambiguities or discrepancies have been interpreted by the Architect

Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the work of the mechanical, electrical, and other specialized trades, and to all of the Sections of the Specifications.

1.2.6 Add the following new Section 1.2.6 to the General Conditions:

Where the addenda and/or bulletin from the Architect causes a change in the cost of the Work, the Contractor shall submit a Change Order to the Owner and Architect to address the change in the Contract Sum and Contract Time, if appropriate, and will proceed per Article "7" herein. Any discrepancy between or with parts of the Contract Documents shall be promptly brought to the attention of the Architect and Owner if discovered by the Contractor.

1.2.7 Add the following new Section 1.2.7 to the General Conditions:

Reference in the Specifications or on the Drawings to any product, material, equipment or type or method of construction, by name, make, catalog number or other identifying symbol, shall be interpreted as establishing a standard of quality; and it shall not be construed as limiting competition in any manner. Codes, standards and publications of private and public bodies mentioned within the Specifications or on the Drawings, and any other standards and specifications so mentioned, shall be considered to be those in force at the time of the Contract award. All Work shall conform to the applicable provisions of the National Electric Code, the National Board of Fire Underwriters and applicable State Building Codes.

1.2.8 Add the following new Section 1.2.8 to the General Conditions:

Equivalents and Substitutions - In the Specifications, if two or more kind, types, brands, or manufacturers of materials are named, are regarded as the required standard of quality, and are presumed to be equal, the Contractor may select one of these items or, if the Contractor desires to use any kind, type, brand, or manufacturer of material other than those named in the Specification, he shall indicate in writing, when requested, what kind, type, brand, or manufacturer is included in the Work.

In all cases, the Architect shall be the sole judge as to whether a proposed product is to be approved and when requested, the Contractor shall be required to submit information describing in specific detail wherein the bid materials differ from the quality and performance required by the bid specifications, and any such further information as may reasonably be required by Architect to evaluate the "equivalency" of the materials.

1.2.9 Add the following new Section 1.2.9 to the General Conditions:

Contractor shall visit and inspect the work areas, take field measurements as may be necessary, verify the character of an existing construction, particularly where it may be affected by the Work under his Contract, and shall acquaint himself with all existing conditions (excluding latent defects, concealed conditions and subsurface conditions) and attendant difficulties affecting the proper execution of this Work.

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1.2.10 Add the following new Section 1.2.10 to the General Conditions:

Substitutions Or Approvals Subsequent to Contract execution - Since the Contract Sum is based upon products specified in the Contract, the Architect will not consider proposed substitutions after Contract execution except in such cases where it is necessary to make a substitution because of strikes, lockouts, bankruptcies, discontinuance of a named product or inability to obtain delivery to the job in time to complete the Work in proper sequence because of conditions beyond the control of the Contractor. Request for such proposed substitutions after Contract execution shall be made in writing to the Architect, and shall be made within seven (7) calendar days of the date that the Contractor ascertains he cannot obtain the named product.

In addition to the foregoing, the Architect will also consider proposed substitutions after Contract execution if the proposed substitution, in the opinion of the Architect, is superior to the named product, or if the proposed substitution is equal to the named product.

1.2.11 Add the following new Section 1.2.11 to the General Conditions:

The Owner will furnish the Contractor, free of charge, three (3) complete sets of the Contract Drawings and Specifications, and a like number of all revised or additional Drawings issued during the progress of the Work. In addition, 2 sets of Contract Drawings will be furnished free to each Contractor to record "as-built" construction per Article 3.11.1. Additional copies of the Drawings and Specifications will be furnished upon request and charged to the Contractor at the cost of reproduction and incidental expenses thereto.

ARTICLE 2 OWNER

2.1.3 Add the following new Section 2.1.3 to the General Conditions: The Owner shall be considered the Board of Education of the Central Islip Union Free School District.

2.2.4 Add the following sentence to the end of Section 2.2.4 of the General Conditions: Information or services under the Owner's control shall be furnished by the Owner through the Architect with reasonable promptness so as to avoid any delays in the orderly progress of the Work.

2.2.5 Delete Section 2.2.5 of the General Conditions in its entirety.

2.4 Owner's Right To Carry Out The Work:

Amend time of notification from ten days to three working days in Section 2.4 of the General Conditions.

2.4.1 Add the following new Section 2.4.1 to the General Conditions:

The Owner reserves the right to perform Work on any phase of the Project through a change order when the established and current Schedule becomes jeopardized due to Contractor's inaction consisting of failure to man the Work properly, failure to prosecute approved submittals, and failure to prosecute contracts and purchase orders.

ARTICLE 3 CONTRACTOR

3.2.1 Add: Contractor shall, prior to starting the work on any single portion and at frequent intervals during the progress of the work, carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications, Addenda, and other Contract Documents with each other and with information furnished by the Owner pursuant to paragraph No. 2.2 and shall, at once, report to the Architect and Owner any error, inconsistency, or omission he may discover.

The Contractor shall perform no portion of the work at any time without Contract Documents and, where required, approved shop drawings, product data, or samples for such portion of the work.

Should the Contractor elect to release work without approvals, same shall be at his own risk and expense.

3.2.2.1 Add the following new Subsection 3.2.2.1 to the General Conditions: "The Contractor shall verify all dimensions by measurement at the job site, and shall take any and all other measurements necessary to verify the Drawings and proper layout of the Work. Any major discrepancy affecting the layout of the Work shall be called to the Architect's attention by the Contractor. No Work shall proceed until such discrepancy is rectified."

3.2.2.2 Add new paragraph: "The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner."

3.2.4 Add new Paragraph to 3.2.4, as follows:

The Contractor shall give the Architect timely notice of any additional design drawings, specifications, or instructions required to define the work in greater detail or to permit the proper progress of the work; and the Architect shall provide such information with reasonable promptness so as to cause no delay in the work.

3.2.5 Add the following new Section 3.2.5 to the General Conditions:

Drawings of mechanical and electrical installation are shown diagrammatically. Contractor shall be responsible for the coordination of his Work with other Contractors or trades.

3.2.6 Add the following new Section 3.2.6 to the General Conditions: "Where the scope of work of a section in the Specifications or Drawings calls for service connections, supports, or installation, of any item or group of items being furnished by other sections, the omission of any given item from that section in the Specifications or Drawings shall not relieve the Contractor of the responsibility for installing, connecting or supporting such item at no increase in the Contract Sum. The Contractor is deemed to have examined the plans and Specifications of all other sections to ascertain the full scope of his work, including but not limited to connections, supports and installation of equipment furnished by other trades or sections."

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3.3.1 Add the following new Subsection 3.3.1.1 to the General Conditions:

3.3.1.1 The Contractor shall:

1. review any specified construction or installation procedure, including those recommended by manufacturers,
2. advise the Architect:
 - a. if the specified procedure deviates from good construction practice, or
 - b. of any objections the Contractor may have to the procedure; and
3. propose any alternative procedure.

3.3.4 Add 3.3.4, as follows:

Where the Contract Documents refer to particular construction means, methods, techniques, sequences, or procedures, or indicate or imply that such are to be used in the work, such mention is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the work shall be the responsibility of the Contractor. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences, or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences, or procedures are referred to, indicated, or implied by the Contract Documents.

3.3.4 Add the following new Section 3.3.4 to the General Conditions:

The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

Add the following new Subsections 3.4.1.1 through 3.4.1.6 to the General Conditions:

3.4.1.1 Not later than thirty (30) days from the date of Owner's approval of Architect's Drawings and Specifications, the Contractor shall provide a list showing the name of the manufacturers proposed to be used for each of the products identified in the Specifications.

3.4.1.2 The Owner will with reasonable promptness reply to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such manufacturer. If adequate data on any proposed manufacturer is not available, the Owner may state that action will be deferred until the Contractor provides further data. Failure to object to a manufacturer shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must conform to such requirements.

3.4.1.3 After the Owner approves Architect's Drawings and Specifications, the Owner will consider a formal request for the substitution of products in place of those specified in the Specifications.

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- 3.4.1.4 By making requests for substitutions based on Subsection 3.4.1.3 above, the Contractor:
- (1) Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified.
 - (2) Represents that he will provide the same warranty for the substitution that he would for that specified.
 - (3) Certifies that the cost data presented is complete and includes all related costs under this Contract, but excludes costs under separate contracts, and excludes the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;
 - (4) Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; and
 - (5) will reimburse Owner for additional costs from claims by other contractors resulting from incorporation of the requested substitution.
- 3.4.1.5 Whenever the Contractor proposes a substitution for a specified item of the Work, the Architect or Owner may require the Contractor to produce reasonable evidence that the substituted item meets the requirements of the Specifications. All such data shall be furnished at the Contractor's expense (notwithstanding payment provisions of the Agreement). This provision shall not require the Contractor to pay for periodic testing of different batches of the same material unless such testing is specifically required by the Contract Documents to be performed at the Contractor's expense.
- 3.4.1.6 The Contract Documents are intended to produce a building improvement of consistent character and quality of design. The Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project as well as for their intrinsic merits. The Architect will not approve, as equal to materials specified, proposed substitutes which, in his reasonable opinion, would be out of character or quality of design of the Project.
- 3.4.3.1 Add the following new Subsection 3.4.3.1 to the General Conditions: "Contractor shall provide all required labor and material to proceed with Work as per the Construction Schedule. The Contractor shall work expeditiously through the Project completion."
- 3.4.4 Add new paragraph: "In the event of strikes or labor disputes by the Contractor's forces, or by other Contractors performing work for the Owner under other contracts, the Contractor shall continue with its unrelated and unaffected work to the extent reasonably possible and provide all necessary manpower as required to maintain the schedule and completion dates of this project."
Notwithstanding anything in the previous sentence to the contrary, Contractor shall be entitled to an extension of time, but not an increase in the Contract Sum, for such disputes which delay Contractor's performance of the Work.
- 3.4.4.2 Add new paragraph: "No extension of time shall be granted for delays caused by labor or material disputes." that are solely within Contractor's reasonable control.
- 3.4.4.3.2 Add new paragraph: "In case the progress of the Work is affected by an undue delay in furnishings or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or a Change Order or a Construction Change Directive, but in no case shall the amount of such change be additional to the contract."

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3.5.1 Add the following new Section 3.5.1 to the General Conditions:

Guaranteed Savings. The Project will result in Energy Savings as detailed within Section VI. of Exhibit A, in the total amount of \$9,251,844 and operational savings in the total amount of \$950,064 (as outlined in Table A of Exhibit A, Section VI. Measurement & Verification Plan), during the eighteen (18) year period following Contractor achieving Final Completion" of the Project ("Total Guaranteed Savings"). Contractor represents and warrants that such Total Guaranteed Savings will exceed Owner's total cost of the Project. Contractor represents and warrants that the number of years of average life expectancy of the E.C. Measures exceeds the Eighteen (18) year term of the Guarantee. Subject to the terms and conditions of Exhibit A, if Owner does not achieve annual energy savings equal to or greater than the annual guaranteed energy savings indicated in Table A of Section VI. of Exhibit A, then Contractor hereby agrees to reimburse Owner the difference between the annual guaranteed energy savings in the amount indicated on Table A – Guaranteed Savings in Section VI. of Exhibit A, and the actual annual energy savings realized by Owner in that Guarantee Year, as calculated in accordance with Section VI. of Exhibit A. The parties agree that Section VI. of Exhibit A shall control the rights and responsibilities of the Parties with respect to the Guaranteed Savings identified therein. Notwithstanding anything in this Agreement to the contrary, in the event of any conflict between this Section 3.5.1 and Section VI. of Exhibit A, Section VI. of Exhibit A shall control.

Contractor represents and warrants the requirements set forth in Exhibit C, State Specific Statutory Requirements, will be met.

3.5.2 Add:

Except as otherwise specified, all work shall be guaranteed by the Contractor and its subcontractors, against defects resulting from the use of inferior materials, equipment or workmanship for a minimum of two (2) years from the date of Final Completion of an EC Measure by building; this date shall be as determined by the Architect in writing and all guarantee-warranty unless specifically noted otherwise, shall commence from that date. Guarantees for all work installed by a subcontractor shall be supported by subcontractor's guarantee for a minimum term of two (2) years in duration from the date of Final Completion of an EC Measure by building. Contractor shall provide a Maintenance Bond from its Surety for a minimum term of two years commencing upon Final Completion against defects resulting from the use of inferior materials, equipment or workmanship.

3.5.3 Add:

If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Architect or Engineer are rendered necessary as the result of the use of materials, equipment or workmanship which are defective or inferior or not in accordance with the items of the Contract, the Contractor shall, promptly upon notice from the Owner, and without expense to the Owner, place in satisfactory condition in every particular all of such guaranteed work, correct all defects therein; and make good all damage to the structure or equipment or contents thereof which, in the opinion of the Architect or Engineer is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract; and make good any work or materials or the equipment and contents of structures or site disturbed in fulfilling any such guarantee.

3.5.4 Add:

In any case, where in fulfilling the requirements of the Contract or of any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under other Contracts, he shall restore such disturbed work to a condition satisfactory to the Architect or Engineer and guarantee such restored work to the same extent as it was guaranteed under such other Contracts.

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- 3.5.5 Add:
If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his Surety shall be liable for all expenses incurred. The warranty provided in this Paragraph 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. Any warranty period specified as less than two (2) years in duration for any work, materials or equipment in the Project Specifications shall be increased to a two year term. Any warranty period specified as longer than two years in duration for any work, materials or equipment in the Project Specifications shall be of such longer duration.
- 3.6 Delete Section 3.6 of the General Conditions, and replace deleted Section 3.6 with the following:
The Owner is exempt from payment of Sales and Compensating Use Taxes of the State and of cities and counties on all materials and supplies sold to the Owner. These taxes are not to be included in the Contractor's bid to the Owner, the subcontractor's bid to the Contractor, the subcontractor's bids to the subcontractors, and so on.
- 3.6.1 Add the following new Section 3.6.1 to the General Conditions:
In order to affect the sales tax exemption, the Contract between the Contractor and the Owner will be proof of the exempt status of purchases made for such Contract. Under such a contract with a tax exempt organization, the purchase by the Contractor of supplies and materials will be a purchase or procurement for resale and therefore not subject to the New York State Sales or Compensation Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by the Contractor to the Owner, is tax exempt.
- 3.6.2 Add the following new Section 3.6.2 to the General Conditions:
All subcontract, sub-subcontract, etc., agreements shall be similar to the Owner-Contractor Agreement. All purchases by subcontractors or sub-subcontractors of supplies and materials will be purchases or procurements for resale to the Contractor or subcontractor, whatever the case may be, and therefore not subject to the aforesaid sales or compensating use taxes. All agreements must provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such materials and supplies into the permanent construction.
- 3.6.3 Add the following new Section 3.6.3 to the General Conditions:
All agreements related to the Project must indicate the project name, location and exempt owner.
- 3.6.4 Add the following new Section 3.6.4 to the General Conditions:
It shall be the responsibility of the Contractor and its subcontractors and material suppliers to obtain any and all necessary resale exception certificates from the appropriate governmental agency or agencies, and furnish a resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the Work.
- 3.6.5 Add the following new Section 3.6.5 to the General Conditions:
The subcontractor shall be fully responsible for all supplies and materials purchased on a resale basis, and shall protect the same, maintain them in proper condition and repair, replace and make good any damage thereto without cost to the Owner until such time as the Work is accepted by the Architect and Owner.

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3.6.6 Add the following new Section 3.6.6 to the General Conditions:

Title to all materials sold by the Contractor to the Owner pursuant to the provisions of the Contract shall vest in and become the sole property of the Owner upon delivery of such materials to the site and payment for such materials by the Owner.

3.6.7 Add the following new Section 3.6.7 to the General Conditions:

It is important to note that materials or supplies purchased for the performance of the Work but not incorporated into the permanent construction may be subject to sales tax. Rental of tools, equipment and supplies may also be subject to sales tax. Such tax shall be paid by the Contractor or its subcontractors.

3.7 Add:

The Contractor, in securing other permits for construction or any other aspect of the work associated with this project which requires a permit, notwithstanding language in the agreement, shall, at his own cost and expense, make the necessary arrangements to complete, file, and have sealed by a professional engineer licensed in the jurisdiction, any and all preliminary affidavits of certification that may be required by the governing agency or agencies having jurisdiction for issuing permits for construction for this project prior to starting construction. Further, the Contractors shall, if required by ordinances, laws, codes, and rules and regulations of the governing agencies having jurisdiction over this project, retain a licensed Professional Engineer to supervise the construction of this project including but not limited to foundations, structural work, soils, weld, reinforced masonry, mechanical work, electrical work and the like. At such time as the Owner shall make application for the Certificate of Occupancy, Contractor shall, at its own costs and expense, file and have sealed by a Professional Engineer licensed in the jurisdiction, the final affidavit(s) of certification that the project has been constructed in conformance with filed documents, and such other data that may be required by the governing agency or agencies having jurisdiction over this project.

3.9.2.1 Add the following new Subsection 3.9.2.1 to the General Conditions:

Qualifications of Superintendent: The Contractor shall employ a Superintendent (also known as the "Project Manager"), for the duration of the Project, whose qualifications meet or exceed those listed below. Prior to employing the Superintendent, the Contractor shall submit to the Architect the name of the proposed Superintendent and, if requested by the Architect, a statement attesting to his qualifications.

1. Five (5) years of experience as a Superintendent.
2. Superintendent on at least two (2) construction projects equal to, or greater than, the Contract Sum for this Contract.
3. Superintendent on at least two (2) projects of similar construction types and procedures as this Project.

Any portion of the Work requiring professional engineering or the application of engineering principles or data shall be carried out under the supervision of a licensed engineer in the State of New York and shall be retained by the Contractor.

3.9.3 Add:

The Contractor's superintendent shall remain in attendance at the site and shall be present at all times when work of any kind is being done, including and especially any work done on overtime. The Contractor's superintendent shall keep a daily log of the progress of the work and make this accessible to the Architect's Project Representative at all times.

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3.9.5 Add:

The Owner reserves the right to approve the Contractor's proposed personnel, and anyone not so approved by the Owner shall immediately be replaced by someone acceptable to the Owner. If, in the course of construction, the Owner determines in its sole discretion that it would be in its best interests to request a change in the contractor's personnel, Owner may do so upon written request of Owner; and the Contractor shall immediately assign a suitable qualified replacement who is acceptable to the Owner.

3.9.5 Add the following new Section 3.9.5 to the General Conditions:

The Contractor shall furnish the Owner in writing the names, addresses and telephone numbers of the members of his organization and Subcontractors' organizations who can be contacted in the event of an out-of-hours emergency at the building site. The Contractor shall arrange for and attend progress meetings with the Owner's representative and such other persons the Owner may from time to time wish to have present. The progress meetings shall include all key personnel on the job, including the Contractor and subcontractors, or other persons in charge of various phases of the Work.

3.9.6 Add the following new Section 3.9.6 to the General Conditions:

Contractor shall coordinate and supervise the Work performed by its Subcontractors so that the Work is carried out without conflict between trades and so that no trade causes delay to the general progress of the Work. The Contractor and all subcontractors shall afford each trade reasonable opportunity for the installation of their Work and the storage of their materials.

3.10.1.1 Contractor shall expeditiously forward construction schedules to Owner and shall cooperate with the Owner and other Contractors in the orderly and timely work, and fully cooperate with Owner in the preparation of updated Progress Schedules.

3.10.4 Add the following new Subsections 3.10.4.1 through 3.10.4.6.2 to the General Conditions:

3.10.4.1 "The construction schedule shall be in a detailed critical path method (CPM) or Primavera-type format satisfactory to the Owner and the Architect, which shall also:

- (a) provide a graphic representation of all activities and events that will occur during performance of the Work;
- (b) identify each phase of construction and occupancy; and
- (c) set forth dates that are critical in insuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as the "Milestone Dates")."

3.10.4.2 "Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and re-submitted for acceptance."

3.10.4.3 "The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays."

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- 3.10.4.4 "The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to as progress reports) or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the contract time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner in writing and authorized pursuant to Change Order."
- 3.10.4.5 "The construction schedule shall be updated at least once a month or more frequently if requested. The Contractor shall furnish the Owner and Architect with sufficient copies of the original schedule and all updated schedules as the Owner or Architect may require."
- 3.10.4.6 "In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule."
- 3.10.4.6.1 "The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to 3.10.4.6"
- 3.10.4.6.2 "The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents."
- 3.11 Add new Paragraphs 3.11.2.1 through 3.11.2.4, as follows:
- 3.11.2.1 The Contractor shall maintain a record of any and all changes from the Contract Documents and/or approved shop drawings due to field conditions.
- 3.11.2.2 All such field changes shall be indicated as soon as possible and no later than at working week's end on a separate set of Contract Documents maintained at the work site expressly for that purpose. Advise Architect of each change
- 3.11.2.3 Upon completion of the project, Contractor shall record all such field changes on a set of black line prints with blue markups as well as electronic color .PDF files furnished by the Contractor so as to compile a complete record set of drawings. Upon completion and review, same shall be turned over to the Architect. All record drawings will be furnished prior to final certification of payment.
- 3.11.2.4 In addition to drawings above, the appropriate Prime Contractor shall prepare and deliver to the Architect a minimum of three (3) copies of a project manual, including the following, in a form approved by the Architect.:
1. Full operating and maintenance instructions for all mechanical and electrical apparatus including schematic diagrams of controls, schedules of electrical panels, and tag charts for all valves.
 2. Copies of all warranties, certifications, and the like for all apparatus and material furnished along with names, addresses, and telephone numbers of each organization involved.

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Coordinate operating and maintenance manual requirements set forth herein with Section 01700 regarding actual specific requirements

3.12.1 Add the following two sentences to the end of Section 3.12.1 of the General Conditions:

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

3.12.2 Delete Section 3.12.2 of the General Conditions in its entirety and substitute the following: "Product Data are illustrations, standard schedules, performance charts, recommended installation procedures and instructions, operating and maintenance procedures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work."

3.12.7 Add the following three sentences to the end of Section 3.12.7 of the General Conditions: "Contractor shall be responsible for verification of field dimensions and shall furnish such information to the Architect when requested. Before Contractor proceeds with the Work in question, the Contractor should field verify all dimensions. In case of doubt about dimensions, he should apply to the Architect immediately for instructions.

3.12.11 Add the following new Section 3.12.11 to the General Conditions:

The Owner's approval of Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation, nor shall the Owner's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples. No portion of the Work requiring a Shop Drawing or Sample shall be commenced until the submission has been approved by the Owner. All such portions of the Work shall be in accordance with approved Shop Drawings and Samples.

3.12.12 Add 3.12.12, as follows:

3.12.12 Immediately after signing of Contract by Owner and Contractor, Contractor must submit a complete list of shop drawings from all trades and/or specify the approximate dates on which they will be submitted for approval. The Contractor shall submit to the Architect all shop drawings and submittals in sufficient time to allow ten (10) working days for the Architect's review. Approval signatures of Contractor and all subcontractors affected by the Work shown therein must appear on all shop drawings before submission to Architect.

3.12.13 Add 3.12.13, as follows:

If Contractor elects to deviate from Contract Drawings and specifications, such deviation shall be subject to Architect's review, followed by his approval or rejection, at a time cost to Contractor of One Hundred Ninety Dollars per man hour (\$190/hour) of Architect's staff time and must be approved by the Owner in advance in writing if increased costs or deviation from the building's aesthetic quality are affected. In proposing such deviation for the Architect's consideration, the Contractor represents that the Contractor has complied with requirements of Paragraph Nos. 3.12.1 through 3.12.11.

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Samples shall be properly labeled, giving the following information as applicable:

1. Project name and location.
2. Name, finish, and composition of material.
3. Location where material is to be used.
4. When approved, samples shall be so indicated.
5. Labels shall be large enough for approval stamp

3.12.13 Add the following new Section 3.12.13 to the General Conditions:

Contractor shall submit all submittals and shop drawings in a digitized format via E-mail to the Architect. Architect will direct the procedure to be followed for his stamping of prints and subsequent distribution and resubmissions. The final drawings submitted shall have all corrections made and be exactly as the Work has been approved and installed.

3.12.17 Add:

Each Contractor will maintain current at the site two sets of contract drawings on which shall be shown in a neat and accurate manner the actual installation of the work, indicating thereon any variations from the contract drawings. Changes, whether resulting from formal change orders or other instructions issued by the Architect, shall be recorded. Include changes in sizes, grades, location and dimensions.

Add the following new Sections 3.13.1 through 3.13.8 to the General Conditions:

- 3.13.1 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times with the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents.
- 3.13.2 Contractor shall confine its use of the premises for all purposes to the areas occupied by the construction and related storage areas.
- 3.13.3 The Contractor shall provide all required temporary access walkways, both interior and exterior, temporary partitioning, and the like, necessary to complete the operations.
- 3.13.4 The Contractor shall maintain entrance to and/or exit from building and building site. Contractor's work areas shall be kept clean each day of refuse including containers, cups, and the like. Contractor performing work on this contract shall schedule its work not to unreasonably interfere with any traffic to and from the required areas of use. Contractor shall be responsible for maintaining all traffic and shall provide and maintain all required barriers and protection as required by OSHA and other governing agencies having jurisdiction as well as additional barriers as may be directed by Architect.
- 3.13.5 Contractor shall repair or replace any existing trees, shrubbery, or other planting damaged by operations and/or workmen employed by him in performance of this Contract.
- 3.13.6 During the performance of the Work, the Contractor shall conduct its Work so as to minimize interference with traffic near the Work.

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3.13.7 SECURITY

3.13.7.1 It will be the responsibility of the Contractor to provide necessary and required security measures to safeguard the construction site adequately from vandalism and intrusion of unauthorized persons.

3.13.7.2 The portions of the School premises at which Work is performed by Contractor pursuant to the Contract must be secured 24 hours a day, seven (7) days a week, including all holidays.

3.13.8 Add:

The Owner shall establish the limits of the Work in addition to any Contract Limit Lines shown on the Drawings. Contractor shall continue his operations within these limits, unless upon written request and reply, a variance is agreed to by the Architect and Owner's Representative. The Contractor shall assume full responsibility for trespass on and/or damage to other property and to adjacent real property by any of his employees or his subcontractors' employees.

3.15.1 Delete Section 3.15.1 of the General Conditions, and add new Section 3.15.1, as follows:

The Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, Contractor shall remove all its waste materials and rubbish from and about the Project as well as all tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and leave the Work "broom-clean" or its equivalent, except as otherwise specified. If the Contractor fails to clean up, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.18.1 Revise the first (1st) two lines of Section 3.18.1 of the General Conditions to read as follows: "To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner (Central Islip Union Free School District), the Architect, and agents and employees of any of them from and against claims, damages, losses and . . . Remainder of "3.18.1 remains unchanged, and add as follows: Add at the end of the paragraph; "The Contractor's indemnity obligations under this paragraph 3.18.1 shall, but not by way of limitation, specifically include all claims and judgments against the Owner, Central Islip Union Free School District, the Architects-Engineers, the Construction Manager, and all agents, employees and representatives of Owner, if Contractor violates any applicable statute, rule or regulation including the New York State Occupational Safety and Hazardous Act and the federal occupational Safety and Hazardous Act."

3.18 Add 3.18.3, as follows:

3.18.3 Contractor and its subcontractors are skilled and experienced in the use and interpretation of plans and specifications. They will carefully review the plans and specifications for ambiguities, and will not rely in any way on any explanation or interpretation, oral or written, from any other source.

3.18.5 Unless otherwise stated in the Agreement, Contractor shall, before commencing work, take out and pay for such insurance as may be required to comply with the indemnification and hold harmless provisions outlined under Articles 3.18.1, 3.18.2 and 3.18.3. Such insurance shall be with such companies as may be satisfactory to the Owner, and shall comply with the requirements set forth in Article "11" of the General Conditions and the Supplementary General Conditions.

3.19 Add the following new Sections 3.19, 3.19.1, 3.19.2, and 3.19.3 to the General Conditions:

During the performance of this Contract, the Contractor agrees as follows:

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3.19.1 The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

3.19.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

3.19.3 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Contractor's commitments and shall post copies of the notice in conspicuous places available to employees and applicants for employment. It is understood that this provision applies to "Letters of Intent" as well as formal contracts.

ARTICLE 4 ARCHITECT

4.1.1 Add the following sentence to the end of Section 4.1.1 of the General Conditions: Owner's designated Project Engineer shall assume all duties and responsibilities of "Architect" as defined throughout the Contract and all Contract Documents, and shall be deemed the "Architect" for purposes of the Project.

4.2.4 Add the following sentence to the end of Section 4.2.4 of the General Conditions:

4.2.4.1 Any direct communications between the Owner and the Contractor that affect the performance or administration of the Contract shall be made or confirmed in writing, with copies to the Architect, and any such communications that represent a modification of the Contract requirements shall be documented appropriately.

4.2.8 At the following language to the end of the second sentence of Section 4.2.8 of the General Conditions: "in consultation with Owner's Representative. All Change Orders, Construction Change Directives and field directives shall require the approval of Owner in writing to be binding on Owner."

ARTICLE 5 SUBCONTRACTORS

5.1.3 Add the following new Section 5.1.3 to the General Conditions:

The term "Specialist" or "Specialty Contractor", as may be used in the Specifications, shall mean an individual or firm of established reputation or, if newly organized, whose personnel have previously established a reputation in the same field, which is regularly engaged in, and which maintains a regular force or workmen skilled in either manufacturing or fabricating items required by the Contract, installing items required by the Contract, or otherwise performing work required by the Contract. Where the Specifications require installation by a Specialist or a Specialty Contractor, that term shall also be deemed to mean the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm that will perform the work under the manufacturer's direct supervision. All other requirements and provisions contained in the Contract pertaining to Subcontractors and Sub-subcontractors are applicable to Specialty Contractors.

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- 5.2.1 Delete paragraph and replace with the following:
The Contractor will provide in the Comprehensive Energy Audit a complete list of subcontractors who Contractor intends to use on the project, subject to Owner's approval of such subcontractors to be approved by Owner within 14 days of Owner's receipt of the CEA listing such subcontractors. Contractor shall not award any work to any Subcontractor not listed in the Comprehensive Energy Audit without prior written approval of the Architect or Owner, which approval will not be given until the Contractor submits to the Architect a written statement concerning the proposed award to the Subcontractor. (*see Gen'l Conditions 5.2.3 which explicitly covers this situation*) Failure of the Owner or Architect to reply with (1) either an objection to particular subcontractors or (2) notification requiring additional time to review and evaluate such subcontractors within fourteen (14) days of CONTRACTOR's written request for Owner's approval of the list of proposed subcontractors, as set forth in the final form of the Comprehensive Energy Audit (or an approved Addendum thereto), shall constitute notice of no reasonable objection.
- 5.2.1.1 Subcontractors will not be acceptable unless, when requested by the Architect, evidence is furnished that the proposed subcontractor has satisfactorily completed similar subcontracts as contemplated under this contract and has the necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent to the Documents.
- 5.2.2 Add the following sentence to the end of paragraph "5.2.2":
"Other than circumstances of Owner or Architect not providing a reply to Contractor within the fourteen (14) day period specified in paragraph "5.2.1" above,, the Contractor shall not award any work to any Subcontractor without prior written approval of the Architect and Owner, which approval will not be given until the Contractor submits to the Architect a written statement concerning the proposed award to the Subcontractor, which statement shall contain such information as the Architect or Owner will require."
- 5.2.3.1 Approval of a subcontractor may be revoked or withdrawn, if, in the opinion of the Architect, such subcontractor evidences an unwillingness or inability to perform his work in strict accordance with the Contract Documents.
- 5.3.1.1 Add the following provision as a new Subparagraph 5.3.1.1:
All portions of the Work that the Contractor's organization does not perform shall be performed under subcontracts or by other appropriate written agreement with the Contractor. All subcontracts (and such other appropriate agreements) shall be evidenced by a writing that substantially conforms to a subcontract form agreed to in advance between Owner and Contractor or is otherwise approved by Owner. Each such subcontract shall, where the context so requires, contain provisions that:
- .1 require that such Work be performed in accordance with the requirements of the Contract Documents;
 - .2 waive all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the insurance described in the Contract Documents;
 - .3 require the Subcontractor to carry and maintain insurance coverage in accordance with the Contract Documents, and to file certificates of such coverage with the Contractor;

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- .4 require the Subcontractor to submit certificates and waivers of liens for work completed by it and by its Sub-subcontractors, and waivers of lien from suppliers as a condition to the disbursement of the progress payment next due and owing;
- .5 require submission to Contractor or Sub-subcontractor, as the case may be, of applications for payment in a form approved by the Owner, together with clearly defined invoices and billings supporting all such applications under each subcontract to which the Contractor is a party;
- .6 report, so far as practicable, unit prices and any other feasible formula for use in the determination of costs of changes in the Work;
- .7 require each Subcontractor to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required herein;
- .8 require that each Subcontractor continue to perform under its subcontract in the event the Contract is terminated and the Owner shall take an assignment of said subcontract and request such Subcontractor to continue such performance; and
- .9 require each Subcontractor to remove all debris created by its activities.
- .10 require subcontractors to indemnify and save harmless the Board of Education of the Central Islip Union Free School District, the Architects-Engineers, the Owner's Construction Manager, if any, and their agents, employees, or any other person to the extent permitted by law against loss or expense including attorney's fees, by reason of the liability imposed by law upon the Owner, the Architects-Engineers and Construction Manager, for damage because of bodily injuries, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property arising out of or in consequence of the performance of this Contract or by reason of its acts on or about Owner's premises, whether such injuries to persons or damage to property are due or claimed to be due to any negligence of the Owner, his employees or agents, or any other person.

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

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

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5.3.3 Add new paragraph: "The Contractor shall promptly notify the Owner and Architect of any material defaults by any Subcontractors. Notwithstanding any provision contained in this Article "5" to the contrary, it is hereby acknowledged and agreed that the Owner has in no manner agreed, expressly or impliedly, nor will the Owner agree, to allow any Subcontractor or other material supplier or worker employed by the Contractor the right to obtain a judgment or decree against the Owner for the amount due it from the Contractor."

5.4.4 All subcontracts shall be in writing. Contractor shall provide to Owner a Sample of the Contract form to be entered into between Contractor and each subcontractor evidencing, inter alia, each such subcontractor's indemnification and holding harmless of Contractor and Owner Board of Trustees of the Owner Central Islip Union Free School District, its Architects-Engineers, Construction Manager, and their agents and employees for any liability, bodily injury, or property damage to Owner, its employees and agents, or to third parties or to subcontractor's employees or agents, arising from the work or activities of subcontractor upon Owner's premises or upon premises adjacent thereto.

ARTICLE 6: CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

Add the following new Subsection 6.1.2.1 to the General Conditions:

6.1.2.1 Where the term "separate contractor" is used in this Article, it shall mean other contractors performing construction or operations on the site not included in the Project.

6.1.3.1 Add the following new Subsection 6.1.3.1 to the General Conditions:

Coordination with other Contractors. During the progress of the Work, other contractors may be engaged in performing other work unrelated to the Project. Contractor shall coordinate the Work to be done hereunder with the work of such other contractors, and Contractor shall cooperate with such other contractors and Owner and carefully fit its own Work to that provided under other contracts.

If the Contractor notifies the Architect in writing that another contractor is failing to coordinate his work, the Architect must promptly investigate the charge. The Owner shall not, however, be liable for any damages suffered by Contractor by reason of the other Contractor's failure to coordinate his work, or by reason of another Contractor's default or delays in performance, it being understood that the Owner does not guarantee the responsibility or continued efficiency of any Contractor. . Should the Contractor sustain any damage through any act or omission of any other Contractor having a contract with the Owner for the performance of work upon the site or of work which may be necessary to be performed for the proper prosecution of the work to be performed hereunder, or through any act or omission of a subcontractor of such Contractor, the Contractor shall have no claim against the Owner for such damage, but shall have a right to recover such damage from the other Contractor or subcontractor as may be permitted under law.

6.1.6 Add new paragraph: "The Owner reserves the right to perform work on any phase of the project through a change order plus appropriate administrative costs when the established milestones become jeopardized due to any contractor's inaction. Inaction includes, but is not limited to the failure to man the work properly, failure to prosecute approved submittals, and failure to prosecute contracts and purchase orders.

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- 6.2.1.1 Add new paragraph: "The Contractor shall not commit or permit any act which will unreasonably interfere with the performance of work by any separate contractors involved with the work. If the Contractor sustains any damage through any act or omission of other contractors or utilities having a contract with the Owner for the performance of work upon the site or of work which may be necessary to be performed for the proper execution of the work to be performed hereunder, or through any act or omission of a subcontractor of such contractor and/or utility, the Contractor shall have no claim against the Owner for such damage, but shall have a right to seek to recover such damage from the contractor and/or utility under the provision similar to the following provisions which have or will be inserted in the contracts with such contractors and/or utilities.

Should any other contractor having or who shall hereunder have a contract with the Owner for the performance of work upon the site, sustain any damage through any negligent or contractual breaching act or omission of the Contractor hereunder or through any negligent or contractual breaching act or omission of any subcontractor of the Contractor, the Contractor agrees to reimburse such other Contractor for all such damages and to defend at its own expense any suit based upon such claim.

The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, by the exercise of any other remedy provided for by the contract or by law. When the Work of the Contractor or its Subcontractors overlap or dovetail with that of other contractors, material shall be delivered and operations conducted to carry on the Work in an efficient, workmanlike manner.

In case of interference between the operations of different contractors, the Architect or Owner's Representative will be sole judge of the rights of each contractor and shall have the authority to decide in what manner the work may proceed, and in all cases its decision shall be final.

- 6.2.5.1 Add new paragraph: "Claims and other disputes and matters in question between the Contractor and other contractors shall be subject to the provisions of Article "15" herein".

- 6.2.6 Add the following new Section 6.2.6 to the General Conditions:

Contractor and its Subcontractors shall layout and install their Work at such time or times and in such manner as to facilitate the general progress of the Project.

- 6.2.8 Add:

It is agreed that in the event of any dispute arising as to possible or alleged interference between the various Contractors which may retard the progress of the work, the same shall be preliminarily adjusted by the Architect, and thereafter by Owner. The Architect's decision as to the parties at fault and as to the manner in which the matter may be adjusted shall be binding and conclusive on all parties, provided same is sustained by Owner. Architect shall have no liability to Contractor by reason of Architect's Decision.

ARTICLE 7 CHANGES IN THE WORK

7.3 Construction Change Directives:

7.3.1 No change

7.3.7 At the end of the first sentence, add the following: " , not to exceed the amount set forth in Section 7.3.11 below."

7.3.10 Add the following new Section 7.3.11 to the General Conditions:
Lump sum adjustment described in Subparagraph 7.3.3.1 above shall be substantiated by submitting to the Architect for evaluation evidence of actual costs for the following:

1. costs described in Subparagraph 7.3.7 above, including labor and other costs of subcontractors, itemized by trades, and
2. costs of power and consumable supplies for operation of power equipment

7.3.11 In Section 7.3.7, the allowance for the combined overhead and profit shall not exceed fifteen percent (15%) of the cost of the Construction Change Directive.

7.3.12 Following receipt of a Construction Change Directive, Contractor shall calculate the impact of the change on the guaranteed savings and any change order issued may modify the guaranteed savings accordingly.

7.5 Procedures: No changes in work are to be undertaken without the written consent of both Owner and Architect. In order that changes be processed efficiently, the following procedure will be followed for all changes:

- (1) Architect will instruct Contractor on the details of a proposed change and request the Contractor to submit a price for same. Such request will be initiated price, per on A.I.A. Form G-709, and a change estimate number assigned with a copy to Owner.
- (2) Proposed price for contemplated change estimate will be sent to the Architect and Owner's Representative by the Contractor. The Architect will review and send it to the Owner with recommendation for approval or disapproval of the change estimate.
- (3) Owner will in turn review and either approve or disapprove the change by letter to Architect.
- (4) Architect will instruct Contractor to proceed with approved changes and will issue appropriate change order to adjust contract price, per A.I.A. Form G701.
- (5) In exceptional cases, where the Owner and Architect agree that a change should be undertaken in advance of supporting price information, the Contractor will be instructed by the Architect in writing to proceed with the change with the understanding that an equitable price adjustment will be made in due course.
- (6) Any changes undertaken without the Architect's written authorization will not be recognized as claims for extra cost at a later date.

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- (7) Claims for extra costs shall be submitted in writing within two (2) weeks of receipt of instructions of changes. Any change shall be made with written consent as to the allowable limits of overhead and profit. Changes involving additional monies in excess of Ten Thousand (\$10,000.00) Dollars shall be negotiated as to the limits of overhead and profit but not to exceed 10% profit and 5% overhead if its own forces are used, or shall not exceed 5% for profit and 5% for overhead if change order work is accomplished by subcontractor forces.
- (8) When changes in the extent of the work involve both additions and deductions to the contract, the percent fee mark-up for overhead and profit shall apply to the net change only in the cost of the work.

ARTICLE 8 TIME

8.2.2 Modify Section 8.2.2 of the General Conditions as follows: In the first line delete the word "knowingly".

8.2.2.1 Add the following new Subsection 8.2.2.1 to the General Conditions:

8.2.2.1 Contractor shall not commence Work on the site until it has provided Owner with certificates of insurances, and other necessary insurance documentation as indicated in Article "11" herein attesting that the required coverage is in force, which have been received and accepted by the Owner.

8.2.3 Add the following Subparagraph:

Add new paragraph: "The Contractor may request access to the site during times beyond the work hours permitted. Approval is solely at the discretion of the Owner. If approval is given, the Contractor is responsible for paying all additional costs incurred by the Owner, Architect and Owner's Representative for providing the site to the Contractor during the additional time periods."

8.3.1 Modify the first sentence of Section 8.3.1 of the General Conditions by deleting "pending mediation and arbitration", and add to end of Paragraph 8.3.1, the following:

"Contractor shall not be entitled to such Change Order unless Contractor shall make adequate provisions acceptable to Owner for the protection of materials stored on site and for the protection of the work, to the extent then constructed, against the deterioration and against other loss, damage, or theft. (The cost of such protection shall be borne solely by Contractor, unless such delay is directly attributable to the fault of the Owner, in which case, Owner shall bear the cost of such protection.) Upon Owner's written request therefor, during any such delay in the progress of the work, Contractor shall furnish to the Owner written satisfactory evidence that the completion of the work can be accomplished within the extension of the contract time, as set forth in such Change Order."

Extensions of time requested by Contractor which are not the result of an act or neglect of the Owner or Architect, or from changes ordered in the work shall only be considered after the Contractor has made reasonable effort to recover the lost time.

8.3.1.1 Add:

In the event the Contractor delays the work so that substantial completion is not achieved within the time periods specified for completion of work in the Contract, which delay is unreasonable and not justified pursuant to Article 8.3.1 hereof, then in such event Owner may terminate this Contract and hire others to complete the work, and any additional costs or damages incurred by Owner shall be immediately due and owing from Contractor herein.

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- 8.3.1.2 Add new paragraph: "An extension or extensions, of time may be granted subject to the provisions of this article, but only after written application thereof by the Contractor in accordance with Article 15.1.5."
- 8.3.1.2.1 Add the following new Subsection 8.3.1.2.1 to the General Conditions: "An extension of time shall be only for the number of days of delay which the Architect may determine to be due to the causes set forth in the application of 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."
- 8.3.1.2.2 Add the following new Subsection 8.3.1.2.2 to the General Conditions: "The Contractor shall at all times exert allreasonable efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances and shall, at all times, maintain Project wide labor harmony.
- 8.3.2 Add to end of Paragraph 8.3.2, the following:

Further, no claim for delay shall be allowed on account of failure of the Architect to furnish instructions or drawings or to return samples or shop drawings until ten (10) days after receipt by the Architect, of written demand for such instructions, drawings, samples or shop drawings, and not then unless such claim be reasonable.
- 8.3.3 Add, after the word "Documents" at the end of the Paragraph: "including Paragraph 14.1.1 of these General Conditions." Extension of time provided for the completion of the Work shall be Contractor's sole remedy for delay (except for Contractor's right to terminate the Contract pursuant to the provisions of Article 14 hereof), unless the delay shall have been caused by the acts or omissions of Owner or its employees, agents or representatives, in which event Contractor shall be entitled to an extension of time. However, Contractor shall not be entitled to an adjustment in the Contract sum based upon such delays unless the such delays exceed a total of forty-five (45) days, and under such circumstances increases in the Contract sum shall commence on the 46th day of such delay(s). Owner's exercise of any of its rights under the Contract including, without limitations, its rights under Article 7, Changes in the Work, regardless of the extent or number of such Changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.
- 8.3.4 Add:

Contractor waives all claims for damages or additional payment for delays to the work unless caused by acts or omissions of Owner, or its employees, agents or representatives, or as result of circumstances within the reasonable control of Owner; provided however, that the Contract Schedule shall be extended for excusable delays as otherwise provided herein.
Notwithstanding the foregoing, Contractor waives all claims for damages or additional payment for delays to the work caused by Owner's acts or omissions, or its employees, agents and representatives for a total of forty-five (45) days of such claimed delays pursuant to "8.3.3" above.
- 8.3.4.1 Add the following provision as a new Sub-paragraph to 8.3.4.1:

If Contractor fails to achieve specified Milestone Completion dates of the Work or Substantial Completion of the Work (or any portion thereof) on or before the date(s) specified for Milestone

Completion or Substantial Completion in the Agreement, Owner may assert its contractual right declaring Contractor in contractual default, notify Contractor's Surety of such default, and terminate the Contract if Contractor fails to cure the default within seven (7) days of receipt of written notice of default from the Owner.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1.1 Add the following new Section 9.1.1 to the General Conditions: Contractor's Credit to Owner

Engineering Services. The Owner has selected ECG Engineering, P.C., 811 West Jericho Turnpike, Suite 202W, Smithtown, New York 11787 ("ECG") as its Engineering and Architectural services provider to perform design, preparation of construction Drawings and Specifications, project administration and construction management services as the Engineer of record for this Project. Contractor shall consult with Owner's Engineer, ECG, as the Engineer of Record. In modification and clarification of the provisions of Owner's Request for Proposal, Contractor will consult with and coordinate Contractor's contractual services based upon Engineer's Specifications and Drawings Plans. ECG will prepare and submit all necessary design work for the Project. ECG's work and services shall be performed consistent with ECG's professional responsibilities to the Owner pursuant to the applicable provisions of New York law governing professional engineering services. Owner may, in its sole discretion, appoint such other or further engineering or Architectural firms in representing Owner's interests in the Project.

Contractor shall use and fund the services of the Owner's Engineer, ECG, as the Engineer of Record. The fees and total compensation for such Engineering Services shall equal 5.5% of the contract price for Contractor's Work (initially \$499,539, subject to change if the contract price changes), and shall be paid by Contractor to the Engineer in accordance with the terms of the contract between the Owner and ECG executed on March 4, 2019 as attached hereto as Exhibit F. Contractor's Payments to ECG will be made within 30 days of Contractor's receipt of a sufficiently detailed invoice and in no event greater than 45 days from the date of receipt of the invoice. Invoices that have not been paid to ECG by Contractor within 45 days of receipt of invoice shall be subject to interest at the rate of 18% per annum. Both Contractor and Owner agree and acknowledge that the Engineer owes its/his/her professional obligations and duties, including duties of care to the Owner. Contractor shall have no responsibility for the actions or inactions of the Engineer. The Engineer shall remain free from any financial interest in the Agreement which conflicts with the proper completion of its/his/her responsibilities under this Agreement and which conflicts with its/his/her responsibilities and duties to the Owner. Contractor will coordinate all Work and activities under this Agreement with the Engineer.

In addition to any other legal requirements concerning energy performance contracts, ECG, acting on behalf of Owner as Project Engineers and Owner's Construction administrators and managers, shall certify that ECG is free of financial interests in Contractor as would conflict with the proper completion of the audit and design work associated with this Contract, as well as construction administration and management on Owner's behalf, and that full disclosure has been made to the Owner detailing all financial compensation previously received by ECG from Contractor for the Project.

As the Engineer and designer of Record, ECG shall be have the right to all available tax deductions in their entirety arising from the Energy Policy Act, Code Section 179D, and energy efficiency tax deductions, related to this Contract, provided that in doing so there is no adverse tax consequences to Owner. Contractor shall have no claim to this tax deduction on this Project.

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Owner and ECG. Nothing contained within this Contract shall be construed as creating an obligation or responsibility of any kind on the part of Contractor to ensure or confirm in any way ECG's professional services on Owner's behalf, including its sub-consultants and subcontractors. As a result, any assertion, claim, or dispute between ECG and the Owner concerning ECG's performance of its professional services (herein: a "ECG-District Dispute") shall be handled exclusively by and between the Owner and ECG.

Notwithstanding any other provision in this Contract to the contrary, in no event shall Contractor be liable to the Owner for ECG's failure to properly perform its services for or on behalf of the Owner. Owner agrees to look solely to ECG for any deficiencies in the design and engineering services provided by ECG. Notwithstanding the foregoing, Contractor shall be obligated to both Owner and ECG Engineering P.C. as set forth in Articles "2" & "4" of the AIA A-101 Construction Agreement and Section "___" of the Rider "1" thereto, with respect to any claim asserted by Owner and ECG Engineering P.C. for payment of ECG's compensation for services rendered to Owner pursuant to the professional engineering services Agreement dated March 4, 2019, as may result from Contractor's failure to credit (and/or pay over to Owner if required under the terms of the Project's financing) Owner for such professional engineering fees as and to the extent required above.

9.1.2 Add the following new Section 9.1.2 to the General Conditions:

Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment (or direct the Project's financing entity and escrow agent to withhold payment) to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor.

Add new paragraph: "The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which it is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. Any trade breakdown which fails to include sufficient detail, is unbalanced or exhibits "front loading" of the value of the Work shall be rejected. Breakdown shall include multiple construction sites, multiple locations within each site, additions versus renovation work, etc. as required to satisfy State Education Department requirements."

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9.3.3.1 Add the following new Subsection 9.3.3.1 to the General Conditions: "The Contractor shall save and keep the Owner and the Owner's property free from all liens and claims, legal or equitable arising out of the Work of Subcontractors or suppliers to Subcontractors. In the event any such lien is filed by anyone claiming by, through or under the Contractor, the Contractor shall remove and discharge same within ten (10) days of the filing thereof. The Contractor further expressly undertakes to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Owner as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor or any portion of the property or of the construction funds allocated to the Project referred to collectively as liens in this Paragraph 9.3.3.1. The Contractor hereby agrees to indemnify and hold 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."

"In addition to the foregoing, upon receipt of any lien filed by a subcontractor or supplier of Contractor, Owner shall withhold a sum from the Contract fund balance equal to One Hundred and Fifty (150%) percent of the amount of the Lien, to be withheld by Owner until the Lien is voluntarily discharged by the Lienor's Discharge of Lien or by Court Order adjudicating a discharge of such Lien. Upon discharge of the Lien by Surety Bond issued by a Surety with a AM Best's rating of "A", licensed in New York State and in the manner prescribed by statute, Owner will be reimbursed from the contract sum the legal fees and costs incurred in processing such Lien and Lien discharge.

9.3.3.2 Until final completion and acceptance of Work in accordance with Paragraph 9.10, the Owner shall pay ninety-five (95%) percent of the amount of each progress payment due the Contractor.

9.3.3.2 Add the following new Subsection 9.3.3.2 to the General Conditions:

9.3.3.2 Procedures required by Owner shall include submission by the Contractor to the Architect of bills of sale and bills of lading for such materials and equipment, provision of opportunity for Architect's visual verification that such materials and equipment are, in fact, in storage, and, if stored off site, submission by the Contractor of verification that such materials are stored in a bonded warehouse, and are insured by the Contractor, Subcontractor or material supplier.

9.3.2.3.2 All such materials and equipment, including materials and equipment stored on-site but not yet incorporated in the Work, upon which partial payments have been made shall become the property of the Owner, but the care and protection of such materials and equipment shall remain the responsibility of the Contractor until incorporation into the Work, including maintaining insurance coverage on a replacement cost basis.

9.3.2.3.3 Additionally, the Contractor must furnish the following information, where payment is requested for materials and equipment stored off the project site, as part of its Application for Payment:

1. Type of material must be specifically identified by the trade contractor.
2. Trade contractor must furnish an invoice from his supplier showing the total value of the material and/or equipment being stored off site.
3. Trade contractor must provide a Certificate of Insurance or other proof of Insurance acceptable to Owner for the full value of the item.

9.3.4 Add the following new Section 9.3.4 to the General Conditions:

The Owner shall make payments (or authorize payments by the Project financing entity or Escrow Agent) on account of the Contract as provided therein as follows:

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On or about the 28th day of each month, a payment of ninety-five (95%) percent of the value of labor and materials incorporated in the Work and of materials suitably stored at the site, (based on the schedule of values), up to the last day of the preceding month, as estimated by the Architect, less the aggregate of all previous payments.

Upon substantial completion of the Work, as determined by the Architect, and Contractor's submission to Owner of all required Project Closeout documentation, including subcontractors'/suppliers' waivers of lien, Surety's Consent to Final Payment, warranties, maintenance bond, as-built drawings, and Contractor's Release and Affidavit of no debts, a sum sufficient to pay the Contract balance less two times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens, judgments against the Contractor related to the Project which have not been discharged. As the remaining items are completed Owner will pay Contractor the amounts previously retained.

9.3.4.1

Add the following new Subsection 9.3.4.1 to the General Conditions: "All Applications for Payment must be accompanied with certified payrolls for all Work performed. In addition, each Contractor and Subcontractor shall submit to the Owner within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record, as provided by Assembly Bill 6394-B amending Article 8, Section 220, of the NYS Labor Law, subscribed and affirmed as true under penalties of perjury. The Owner shall be required to receive and maintain such payroll records. The original payrolls or transcripts shall be preserved for three years from the completion of the Work. An out-of-state contractor must post a wage rate schedule at the job site."

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9.4.3 Add the following new Section 9.4.3 to the General Conditions:

On all applications for payments the Contractor shall indicate the sums of money being requisitioned for payment of his principal suppliers and Subcontractors for each subdivision of Work and shall include a certificate for payment and release (waiver) of liens in a form as furnished by the Owner to the effect that this money will be used to pay these suppliers and Subcontractors as their interests may appear within fifteen (15) days after receipt of payment from the Owner.

9.4.4 Add the following new Section 9.4.4 to the General Conditions:

At the Owner's discretion and upon Owner's request, prior to the next regular monthly payment, the Contractor shall provide affidavits from each of his Subcontractors and material suppliers which attest to the fact they have received the previous month's payment from the Contractor and have been paid for all labor and materials provided to date, or Owner may require Contractor to deliver a release/waiver of lien from each Subcontractor and material supplier with each application for payment.

9.7 The language of Section 9.7 of the General Conditions shall be changed so that all references to seven (7) days shall be changed to "fifteen (15) days."

The language of Paragraph 9.7 shall be changed by deleting the portion of the 1st sentence, as follows: "or awarded by binding dispute resolution".

9.8.1 Add the following to the end of Section 9.8.1 of the General Conditions:

"and only minor items remain which can be corrected or completed without substantial interference with the Owner's use of the Work."

9.8.1.1 Add as Paragraph 9.8.1.1, as follows:

Upon receipt and acceptance of the Architect's Certificate of Substantial Completion, Contractor may submit an application for semifinal payment.

The semifinal application shall contain all claims of Contractor against the Owner for money which he alleges is due on his Contract and on extra work of any nature; it being hereby mutually agreed that no claim for extra compensation of any description or amount will be made after the semifinal application is presented.

Payment upon the Architect's semifinal certificate indicating substantial completion shall be made for ninety-five (95%) percent of the amount certified as earned, less aggregate of previous payments.

9.8.4 Add the following to the end of Section 9.8.4 of the General Conditions:

Further, for any uncompleted Work at the time of Substantial Completion, the Owner will retain a portion of the Contract Sum equal to the value of the remaining Work, i.e., "punch list", times 200 percent, as determined by the Architect, which withheld funds will be released upon Architect certifying that the Work has been completed to the Architect's and Owner's satisfaction. This notification shall not be abused.

9.10.2 Add the following to the end of Section 9.10.2 of the General Conditions:

If Contractor fails to furnish such releases or waivers as the Owner reasonably requires to satisfy the

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Owner that there are no outstanding liens, the Owner may require the Contractor, as a condition of Final Payment, to furnish a bond satisfactory to the Owner to indemnify the Owner against any such liens.

9.10.2.1

Add:

The following amendments will be made to the Form of Contract, A.I.A. Form A-101, Article "5":

"Before making the final payment provided by Article 5 herein, the Contractor shall supply, in addition to any items required by the General Conditions, the following papers, in proper form:

- A. Consent of the Surety Company to Final Payment.
- B. General Release from Contractor running in favor of the Board of Education of the Central Islip Union Free School District
- C. Affidavit of the Contractor listing all Subcontractors and Suppliers utilized by the Contractor on this Project.
- D. General release and waivers of lien from each of the Subcontractors and suppliers so listed, running in favor of the Board of Education of the Central Islip Union Free School District.
- E. AIA G-706 & G-706A Affidavits of the Contractor that all Subcontractors, Suppliers and Manufacturers have been paid in full.
- F. Contractor's Warranty as required under the terms of the Project Specifications
- G. Subcontractors', suppliers' and Manufacturers' warranties as required pursuant to the terms of the Project Specifications
- H. As-built Drawings and operations manuals as required under the terms of the Project Specifications.
- I. Two Year Maintenance Bond as required pursuant to the terms of the Project Specifications
- J. Guaranteed Energy Costs Savings Agreement and Undertakings in the form set forth in Article "3.5.9" of the Supplementary General Conditions of Construction Contract.
- K. Contractor's release whereby the Contractor certifies that all payrolls, material bills, and other indebtedness connected with the work have been paid, and in consideration of all prior payments and Final Payment, the Contractor releases and forever discharges the Owner from all claims, demands, obligations and liabilities of every kind and nature arising out of or relating to the Contract.
- L. Certification as to full compliance with prevailing wages and payroll certifications as are required under applicable New York State Law
- M. Proof of continuation of Insurance coverage as required pursuant to Contract

9.10.6

Add the following new Section 9.10.6 to the General Conditions:

Final payment will be due one (1) month after final completion of the Work, provided the Work by

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then is fully completed and the Contract fully performed as determined by the Architect and Owner. Upon completion of the Work, the Contractor shall sign and submit a completed release form as follows:

The Contractor certifies that all payrolls, material bills, and other indebtedness connected with the Work have been paid, and in consideration of all prior payments and of a final payment, the Contractor releases and forever discharges the Owner from all claims, demands, obligations and liabilities of every kind and nature arising out of or relating to the Contract. Contractor must also submit all documents required in the Specifications and Project Closeout Section of this Project Manual, together with such documentation and certifications as required under applicable New York State Law.

9.10.6 Add:

In case the Contractor neglects to carry out the provisions of Section 9.10 within twenty (20) days time after receipt of written notice, the Owner may cause all defects to be remedied and all repairs to be made without notice to the Contractor and shall charge the expense thereof to the Contractor and deduct same from the amount so retained and recover the balance, if any, from the Contractor. The order of the Architect as to the condition of the work constructed under this Contract, the extent of the remedies applied and of the repairs made and of the cost thereof shall be binding upon the Contractor, his assigns and sureties.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 Articles 10.1.2 is Added:
Contractor will at all times strictly adhere to the specified Construction Implementation and Phasing Plans as prepared by the Project Engineers which address Phased Construction Areas, Staging Areas, Dumpster Locations, Hours of Activity, Safe off Areas of Activity, Coordination of scheduling of work and designation of work areas.

Add the following new Subsection 10.2.2.1 to the General Conditions:

10.2.2.1 The Contractor acknowledges that the Labor Law of the State of New York, and regulations adopted thereunder, place upon both the Owner and the Contractor certain duties, and that liability for failure to comply therewith is imposed on both the Owner and the Contractor regardless of their respective fault. The Contractor hereby agrees that with respect to the Project, as between the Owner and the Contractor, the Contractor is solely responsible for compliance with all such laws and regulations imposed for the protection of persons performing the Contract. The Contractor shall indemnify and hold harmless the Owner (Central Islip Union Free School District, and its employees and agents of and from any and all liability for violation of such laws and regulations and shall defend any claims or actions which may be brought against the Owner (Central Islip Union Free School District), as the result thereof. In the event that the Contractor shall fail or refuse to defend any such action, the Contractor shall be liable to the Owner (Central Islip Union Free School District) for all costs of the Owner in defending such claim or action and all costs of the Owner (the Central Islip Union Free School District) including attorney's fees, in recovering such defense costs from the Contractor.

10.2.3 Add the following to the end of Section 10.2.3 of the General Conditions:

Contractor shall comply with all applicable provisions of governing agencies (State, federal, and municipal). All machinery, openings, excavations, and other physical hazards shall be guarded in accordance with OSHA requirements. In case of conflicts, the most stringent restrictions will apply.

10.2.7.1 Add the following new Subsection 10.2.7.1 to the General Conditions: The Contractor shall take
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reasonable precautions to ensure against fire during construction. Contractor shall be responsible that the area within contract limits is kept orderly and clean and that combustible rubbish is promptly removed from the site. Combustible materials shall be stored on the site in such a manner and at such locations as approved by the Architect. Before beginning any Work, the Contractor shall confer with the Architect and Owner's Representative and outline the precautions which the Contractor proposes to take against fire, including methods of ensuring that the minimum fire prevention requirements listed herein will be complied with at all times.

Title to all completed or partially completed work at the job site and to all materials delivered to and stored at said job site which are intended to become a part of the completed work covered by the Contract, shall be in the name of the Owner following Owner's payment for such work and materials. Notwithstanding the foregoing, prior to the acceptance of the completed work by the Owner, the Contractor shall be liable for all loss of, or damage to, said completed work, partially completed work, materials furnished by the Contractor, and materials or equipment furnished by others, the custody of which has been given to the Contractor arising from any cause. In the event of loss or damage, the Contractor shall replace or repair the said work materials at his own cost and expense, to the completed satisfaction of the Owner and Architect.

10.2.9 Add the following new Section 10.2.9 to the General Conditions:

10.2.9 The Contractor shall sustain any loss or damage arising from the nature of the work to be performed under this Contract or from the actions of the elements including water, wind and frost. The Contractor shall maintain suitable, adequate and lawful barricades, guard lights, warning and all reasonable safeguards, to protect all property and personnel, public or private.

10.2.10 Add the following new Section 10.2.10 to the General Conditions: The Contractor assumes responsibility for all injury to or destruction of or loss by theft or pilferage of the Contractor's materials, tools, machinery, equipment, appliances, shoring, scaffolding, false and form work and personal property of his employees, from whatever cause arising.

10.2.11 Add the following new Section 10.2.11 to the General Conditions:

Contractor is obligated, by virtue of entering into the Contract with the Owner, to ensure that absolutely no asbestos containing material is used in conjunction with the Work. It is Contractor's sole responsibility to provide assurances that no asbestos containing material is used in the construction, nor does any equipment used in the construction contain any asbestos containing material. If asbestos containing material is found, at any time during or after the construction is completed, it shall be the responsibility of the contractor who installed said material to remove it and replace it with new non-asbestos containing material, as per federal, state and local mandates, all at no expense to the Owner. However, no action to remove asbestos containing material will be undertaken by any contractor without express written consent by Owner as to the procedures to be implemented in identifying, removing and disposing of all such material.

10.2.12 Add the following new Section 10.2.12 to the General Conditions:

Free access to fire hydrants and standpipe connections shall be maintained at all times during construction operations, and portable fire extinguishers shall be provided by the Contractor or its Subcontractors made conveniently available throughout the construction site. Contractor shall notify its employees and Subcontractors of the location of the nearest fire alarm box at all locations at which Work is in progress.

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- 10.2.13 Add the following new Section 10.2.13 to the General Conditions:
No equipment other than equipment with rubber tires will be allowed on any existing or new pavement on the Owner's premises, UNLESS THE PAVEMENT HAS BEEN FIRST PROTECTED WITH PLANKING OR BY OTHER MEANS APPROVED BY THE ARCHITECT.
- 10.5 Add the following new Sections 10.5, 10.5.1, 10.5.2 and 10.5.3 to the General Conditions:
- 10.5.1 The Contractor shall be solely responsible for damage to the site to the extent caused by Contractor or its subcontractors. However, the Contractor shall not be responsible for damage and loss occasioned by the work of other contractors under separate contract with Owner. All claims or suits accruing from such damages caused by Contractor's Work shall be adjusted without loss or expense to the Owner. All other contractors shall consult with and cooperate with the Owner and Contractor in their control of the site and the building.
- 10.5.2 The Contractor shall protect the street, sidewalks and driveways adjacent to the Project, and shall make all necessary repairs for damage caused by Contractor's (and its subcontractors') Work, at Contractor's expense.
- 10.5.3 The Contractor shall provide all temporary enclosures on the site and/or as required for protecting the building from the elements, for providing passageways, for the protection of openings both exterior and interior, and for any other locations where temporary enclosures and protection may be required.
- 10.5.5 No open fires will be permitted in any part of the building. This prohibition shall not apply to an open flame, which will be necessary for items such as (without limitation) a soldering or brazing torch.
- 10.5.6 From the commencement to the completion of the building operations, the Contractor shall keep all parts of the site and the building free from accumulation of water arising from the Work. The Contractor, in addition to the general and specific items mentioned in the above, shall protect all concrete, asphalt paving, stone, brick work, floors and interior finishes where same will be subject to damage from the Work. Completed roofs used for working space or subject to damage from construction at a higher level shall be properly protected from damage and shall be thoroughly cleaned on completion of the work.
- 10.5.8 Except as otherwise specifically provided in the Specifications and Drawings, the Contractor shall protect all drainage, sewer, water, and electrical lines from damage as may be caused by its Work.
- 10.5.9 At all points where trucks or other equipment of Contractor or its Subcontractors cross existing sidewalks, the pavements and curb shall be protected by the Contractor against damage with heavy plank.
- 10.5.10 The Contractor shall be responsible for the breakage of glass (but only to the extent caused by the Work) in all areas where Work is performed until the building or portions thereof in which construction services are carried out are turned over to the Owner following final completion. He may, at his own option, maintain insurance upon this part of the work; the loss, if any, to be made adjustable with and payable to the Owner as trustee for the insureds and the Contractors and subcontractors as their interests may appear, or he may assume the responsibility for the entire value of this part of the project himself.

ARTICLE 11 INSURANCE AND BONDS

Delete all provisions of Article 11 of the General Conditions, with the exception of Sections 11.3.7 and 11.4.2, and substitute in lieu thereof, the following:

11.1.1 Contractor shall, without in any way altering Contractor's liability under the Contract or applicable law, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below in the Schedule of Insurance Coverages and shall provide to Owner Certificates of Insurance, including standard ACCORD and ACCORD 855 (2014-15) Certificates, together with required endorsements to insurance policies, issued by insurance companies licensed in the State of New York with AM Best Co. rating of "secured" or better, to evidence such coverage before any Work commences at the job site. Such certificates and endorsements shall provide that there shall be no termination, non-renewal, or expiration of such coverage without thirty (30) days prior written notice to Owner (the Central Islip Union Free School District), and its Architect/Engineers and Construction Manager (*Gen'l Cond. 11.1.4*) who shall also be named as an additional insured. All insurance proof submitted by Contractor shall provide primary coverage on behalf of Contractor and the insurance coverage of and the insurance coverage for Owner-Central Islip Union Free School District as additional insured shall be primary non-contributory, and any Contractor insurance coverage which limits coverage to the additional insured or which provides secondary insurance coverage of the additional insured will be deemed nonconforming, and shall be rejected by Owner. All Additional Insured Endorsements shall specifically designate the Central Islip Union Free School District, its agents employees and representatives, and the Architects/Engineers, as additional insureds for both ongoing operations and Completed Operations. The Contractor's Insurance policies shall also provide for a waiver of rights of recovery against the Central Islip Union Free School Districts, its employees, and agents. In the event of any failure by Contractor to comply with the provisions of this Section 11.1, Owner may, at its option, on notice to Contractor, suspend the Contract for cause until there is full compliance with this Section 11.1 and/or terminate the Contract for cause. Alternatively, Owner may purchase such insurance at Contractor's expense, provided that Owner shall have no obligation to do so, and if Owner shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

11.1.2 Contractor shall require that all Subcontractors carry the same insurance coverages and limits of liability as required under this Article 11 (excluding the professional liability and umbrella liability insurance requirements), adjusted to the nature of Subcontractors' operations as determined by Contractor in its reasonable discretion, together with a Certificate of Insurance and Policy Endorsements designating Contractor and, Owner and Architects/Engineers as additional insureds (ongoing operations and completed operations) and submit to Owner for approval before any Work commences. Contractor shall submit to Owner a sample of its standard subcontractor agreement incorporating the subcontractors' indemnification provisions as set forth below, as will be executed by Contractor and each of its subcontractors, together with Contractor's written confirmation of (1) each subcontractor's execution of the Subcontractor Agreement and (2) each subcontractor's submittal of the required insurance documentation. Each such Subcontractor's Agreement shall incorporate provisions setting forth each such subcontractor's indemnification and holding harmless of Contractor and Owner - Central Islip Union Free School District, the Architects/Engineers, and the Owners Representative, agents and employees of Owner, for any liability, bodily injury, or property damage to Owner, the Architect, Owners Representative, and its employees and agents, or to third parties or to subcontractor's employees or agents, arising from the work or activities of subcontractor upon Owner's premises or upon premises adjacent thereto. No subcontractor shall enter upon Owner's premises and commence work until it executes such a Subcontract and submits proof of insurance coverage in such required form acceptable to Owner

In the event the Contractor fails to obtain the required insurance certificates of insurance from its subcontractors, and a claim is made or suffered, the Contractor shall indemnify, defend and hold

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harmless the Owner - Central Islip Union Free School District, its board, officers, agents and employees from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to the other indemnity obligations which the Contractor has undertaken in this Agreement.

11.1.3 Upon Final Completion of the Project, Contractor shall submit to Owner Certificates of Insurance and Policy endorsements showing the continuation of insurance coverages that are required by this Article 11 to continue after Final Completion as required by the terms of the Project Specifications

The Contractor shall not commence work under the contracts until he has obtained all the insurance required hereunder and such insurance has been approved by the Owner; nor shall any Contractor allow any Subcontractor to commence Work on his subcontract until all such required insurance has been so obtained and approved. The Owner, the Central Islip Union Free School District, and the Architects/Engineers shall be named as additional insureds. Approval of the insurance by the Owner shall not relieve or decrease the liability of any Contractor hereunder. ACCORD N.Y. Construction Certificate of Liability Insurance Addendum 855-2014/15 Form shall be submitted together with the standard ACCORD Form. All insurance shall be with insurance companies licensed by the State of New York, with a minimum of an AM Best's Co. rating of "secured" (or better), acceptable to Owner. Insurance policies as described below shall be obtained and maintained during the installation period of the Contract.

- (1) Statutory Worker's Compensation, Employer's Liability and NYS Disability Insurance for all of the Contractor's employees to be engaged in the Work on the Project under this Contract, with minimum limits of \$500,000.00 or such greater sums as required under New York State law for each disease and accident. Proof of coverage must be on approved specific form, as required by the NYS Workers' Compensation Board. ACCORD certificates are not acceptable)
- (2) Commercial General Liability, including contingent, contractual liability, products, and completed operations coverages (completed operations coverage to be in effect for three (3) years following Final Completion), coverage ISO occurrence Form CG 00 01 07 98 or later form, with a minimum limit of \$ 1,000,000 combined single limit for bodily injury and property damage, and \$ 3,000,000 Annual Aggregate, together with an \$ 5,000,000 umbrella insurance coverage, together with Fire Damage coverage of \$1,000,000 per occurrence, Medical Pay coverage of \$50,000 per individual and \$2,000,000 products completed/operations coverage with an endorsement to the effect that aggregate limits of liability and umbrella insurance coverage shall apply per project. Limits required may be met through a combination of primary and excess policies. . The Umbrella (Excess Liability) Insurance coverage shall be on a "follow form" basis of the Commercial General Liability insurance coverage. Moreover, the Contractor's insurance coverage shall be primary and the insurance coverage provided to the "additional insured" parties under the Contractor's Insurance policies coverage shall be ISO occurrence Form CG 00 01 07 98 or later form The Contractor's Commercial General Liability and Umbrella insurance policies shall also provide for its Waiver of subrogation rights against the additional insureds. Transfer of Rights of Recovery Against Others (CG 24 04 05 09 or similar) waiving the Contractor Insurers' rights of recovery against the Owner as additional insured. Explosion, demolition and collapse hazards must be included.
- (3) Automobile Liability, including owned, non-owned and hired cars, with minimum limits of \$ 1,000,000.00 bodily injury and property damage, combined single limit, together with umbrella insurance coverage for a total insurance coverage of \$ 3,000,000.00 for each occurrence and as an annual aggregate.

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(4) Hazardous Materials Coverage:

If the scope of the Work involves the removal of asbestos or other hazardous materials, the following provision should be inserted:

In addition to the coverages required and under the same terms and requirements of such coverages, Contractor shall provide hazardous material liability insurance as follows: \$2,000,000 occurrence/\$2,000,000 aggregate, including products and completed operations. Such insurance shall include coverage for Contractor's operations including, but not limited to, removal, replacement enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. If a retroactive date is used, it shall pre-date the inception of the Contract.

If motor vehicles are used for transporting hazardous materials, Contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948) as well as proof of MCS 90. Coverage shall fulfill all requirements set forth herein and shall extend for a period of three (3) years following acceptance by the Owner of the Certificate of Completion.

Professional (E&O) Liability. Professional liability insurance affording protection against claims associated with professional errors and omissions sufficient to afford protection of not less than \$2,000,000 per claim and \$4,000,000 aggregate Testing Company E & O (if testing services are required) \$1,000,000 per occurrence/\$2,000,000 aggregate for the testing and other professional acts of the contractor performed under the contract with the owner.

(6) Contractor's Responsibility for Deductible or Self-Insured Retention. To the extent that any insurance provided hereunder contains a deductible or self-insured retention, the Contractor agrees to indemnify and hold the Owner harmless from the payment of such deductible or self-insured retention, which shall in all circumstances remain the sole obligation and expense of the Contractor.

(7) Contractor's Commercial General Liability insurance shall provide coverage for Contractor's indemnification obligations under Section 3.18 of the General Conditions.

Owner will provide notice to the indemnitor of a claim or matter for which Indemnification is sought, and will allow the indemnitor to select counsel with the consent of Owner (which consent to the selected counsel will not be unreasonably withheld) and will cooperate with indemnitor at indemnitor's expense, and will allow the indemnitor to settle the matter at its sole expense.

(8) All insurance shall be obtained from companies licensed to do business in the State of New York and must be acceptable to Owner with a "AM Best's Co." rating no lower than "" "secured".

A fully completed New York Construction Certificate of Liability Insurance Addendum (ACCORD 855 2014/15) must be included with the standard certificates of insurance.

(9) If at any time, any of the insurance should be canceled, not renewed, not issued or materially modified so that insurance is not in effect as required, the Owner may direct the Contractor to suspend the Work. In that event, no extension of time to complete the Work shall be granted for such period of suspension.

(10) Contractor acknowledges that the Owner is a member of the New York Schools Insurance

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Reciprocal (NYSIR), and further acknowledges that the procurement of Insurance coverage as required pursuant to this Article "11" is intended to benefit not only the Owner, but NYSIR, as the Owner's Insurer

11.2.1 The Owner may, at its option, maintain such insurance as will protect it from contingent liability to others for damages because of bodily injury, including death, which may arise from operations under this Contract, and any other liability for damages which the Contractor is required to insure under any provision of this Contract.

11.3 Property Insurance.

11.3.1 Builder's Risk Insurance. Contractor shall, until Final completion of the Work on the Project, maintain a Builder's Risk Insurance policy, providing coverage for the risk of physical loss or damage to the Work (EC Measures installed) in an amount approved by the Owner. . Such Builder's Risk Insurance policy shall not insure against damage to existing property, but only the Work completed or installed pursuant to the Contract. If any of the Measures are damaged or destroyed after they are installed to Owner's Facilities, but prior to Final Completion of the Project, the proceeds of such insurance shall be provided to Owner to be held in trust for Contractor, and Contractor shall repair or replace such equipment, materials or EC Measures ("Work") and will be paid therefor from such trust funds received from the Builders Risk Insurer. In addition, if any of the Work is damaged or destroyed after Final Completion of the Project and during the Performance Guarantee period, Owner shall be obligated to promptly repair or replace the damaged or destroyed Measures in Owner's sole discretion should Owner rely upon and seek enforcement of the eighteen year Performance Guarantee provided under the Construction Contract. The Owner as well as Contractor's subcontractors shall be considered "Additional Insured," insofar as their interests appear, pursuant to Contractor's Builder's Risk Insurance policy. Contractor shall be allowed to terminate this Builder's Risk Insurance policy following Contractor achieving Final Completion of the Project.

11.3.1.1 Add new Paragraph 11.3.1.1, as follows:

The Contractors shall effect and maintain similar property insurance. Repair or replacement of all damage to the Work or theft of material caused by Contractor's forces or agents, subcontractors and suppliers or their agents, inadequate watchman and protective services, etc., shall be made by the Contractor at its cost and expense. Contractor shall purchase and maintain insurance to cover such damage due to collapse, accident(s), vandalism, malicious mischief, or theft to the full insurable value thereof to protect Owner's interests, his interests, and those of his subcontractors, sub-subcontractors, etc., in the Work. Evidence of such insurance, with the Owner as an additional insured, shall be furnished to the Owner.

11.3.7.1 Add new Paragraph as follows:

In waiving the rights of recovery under the terms of Section 11.3.7, the term "Owner" shall be deemed to include the Central Islip Union Free School District and the Architects/Engineers

11.4 Performance Bond and Payment Bond.

11.4.1.1 Add the following new Subsection 11.4.1.1 to the General Conditions:

Performance and Payment Bonds in the amount of 100% of the applicable Contract Sum shall be purchased by the Contractor from bonding companies acceptable to the Owner with a A.M. Best's Co. rating of "A" or better, and licensed in the State of New York, and shall be in the form of A.I.A.

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Document A312 Performance and Payment Bonds (*AIA-2010 version*), except that the Performance Bond and Payment Bond shall be modified as follows:

(i) Notwithstanding any other provision of the Agreement, Contract or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to any Guaranteed Savings as defined within Section VI. of Exhibit A and referenced in Rider I.

(ii) "The Owner shall be reimbursed by the Contractor and its Surety for all expenses occasioned by the default of Contractor as incurred, with reimbursement initially from the contract balance, and thereafter from the Contractor and Surety upon depletion of the Contract balance. In addition to the foregoing, Owner shall be reimbursed for all attorney's, architect's and construction manager's fees as incurred by Owner in an amount not to exceed five (5%) percent of the said contract sum commencing upon Owner's notification to Surety pursuant to Paragraph "3.1" of the Performance Bond and Paragraph "3" of the Payment Bond."

(iii) Paragraph 5.1.1 of the Surety Payment Bond (2010 version) shall be deleted, and a new Paragraph 5.1.1 shall be inserted, as follows:

"5.1.1 have furnished written notice of non-payment to the Contractor stating the amount claimed and the name of the party to whom materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed services or last performed labor, or last furnished materials or equipment included in the Claim, or within such further period of time allowed by law for the making of such claims for payment of labor, materials and equipment included in the Claim."

(iv) Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Such addition, alteration, change, extension of time, or other modification of the Contract Documents, or forbearance on the part of either the Owner or the Contractor to the other, shall not release the surety of its obligations hereunder and notice to the surety of such matters is hereby waived.

(iii) Surety further agrees that in event of any alleged default by the Owner in the performance of the Owner's obligations to the Contractor under this Agreement, the Contractor or surety shall cause written notice of such default (specifying the default in detail) to be given to the Owner, and the Owner shall have thirty (30) days from time after receipt of such notice within which to cure such default. Such notice of default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Owner.

11.4.1.1A Add the following new Subsection 11.4.1.1A to the General Conditions:

- .1 Contractor shall obtain (a Performance Bond and Labor and Material Payment Bond in the amount of 100% of the applicable Contract Sum by New York State licensed/ Sureties with A.M. Bests Co. rating of "A". Contractor shall deliver its required bonds not later than seven (7) days following the date of execution of the Agreement .
- .2 All Surety bonds shall in all respects conform to the requirements of the law of the State of New York and shall (1) name as obligee the Owner, (2) be in a form of and be issued by a NYS licensed surety satisfactory to Owner, and (3) be in an amount equal to 100% of the applicable Contract Sum and (4) be automatically increased in the amount of any additive Change Orders and Construction Change Directives signed by Owner within thirty (30) days'

from the date of such Change Order

- .3 The premium for bonds required above shall be paid by Contractor and included in the Contract Documents as the obligation of Contractor.
- .4 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 permit a copy to be made.

11.4.1.1(B) Add the following new Subsection 11.4.1.1(B) to the General Conditions: "The Contractor shall, 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 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 and pursuant to any bond issued in connection with the Work."

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.2.1 Add the following language to the end of Section 12.2.1 of the General Conditions:

"and Contractor shall be liable for any cost, loss, or damages to the Owner resulting from such failure or defect."

12.2.2.1 Revise the first two lines to read, as follows:

"In addition to the Contractor's obligations under Section "3.5", if, within two years after the date of Final Completion of the Work or designated portion thereof, or after the date for commencement of warranties ..."*(remainder of Section "12.2.2.1" remains in effect)*

12.2.2.2 & 3 Change "one year" to "two years".

12.2.5 Change "one year" to "two years".

12.2.6 Add new Paragraph, as follows:

The Contractors shall deliver to the Owner, before Final Payment is made on the Contract, all required written guarantees/warranties and Surety Maintenance Bonds in a form acceptable to the Architect, properly sworn to and signed by a responsible officer of the Contractor's firm, warranting all work and materials included in his Contract against all defects not due to ordinary wear and use for a period of two (2) years, or as amended in the Contract Documents, from the date of Final Completion of an EC Measure by building.

ARTICLE 13 MISCELLANEOUS PROVISIONS

Add the following new Section 13.1.1 to the General Conditions:

13.1.1 Discrimination in Employment. In accordance with Section 220-e of the Labor Law of the State of New York, it is agreed that:

- (1) In the hiring of employees for the performance of this Contract or any Subcontract hereunder, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor shall by reason of race, creed, color, disability, sex 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;

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- (2) 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 race, color, creed, disability, sex or national origin;
- (3) There may be deducted from the amounts payable to the Contractor under this Contract a penalty of Fifty (\$50.00) Dollars for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract;
- (4) This Contract may be canceled by the Owner, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract; and
- (5) The aforesaid provisions of this section shall be limited to operations performed within the territorial limits of the State of New York.

13.1.2 Add the following new Section 13.1.2 to the General Conditions:

If, after making Final Payment, the Owner conveys to a third party any building or other improvement constructed under the Contract, any rights with respect to the property so conveyed which the Owner may have against the Contractor under Article 12 or by virtue of claims which, under the terms of Paragraphs 9.10.4 and Article 15, are reserved to the Owner after the making and acceptance of final payment, shall automatically transfer to such third party.

13.3 Delete Section 13.3 of the General Conditions, and substitute in lieu thereof the following:

All notices to be given hereunder shall be in writing, and may be given, served or made (1) by depositing the same in the United States mail addressed to the authorized representative (as specified below) of the party to be notified, postage prepaid and registered or certified with return receipt requested, (2) by depositing the same for overnight delivery (pre-paid by or billed to the party giving notice) with Federal Express or other nationally recognized overnight delivery service addressed to the authorized representative of the party to be notified, or (3) by delivering the same in person to the said authorized representative of such party., or (4) by transmitting same via fax or e-mail as noted below. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in the Agreement from and after the fourth (4th) day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given by means of "2" and "3" above shall be effective when received by the party to be notified or by their employee, agent or representative. Notice given by means of Fax or e-mail ("4" above) shall be deemed received upon sender's receipt of a Fax transmission report indicating receipt by the recipient's Fax machine or by "SENT" confirmation on the sender's e-mail server. All notices to be given to the parties hereto shall be sent to or made at the addresses set forth herein below. By giving the other parties at least seven (7) days' written notice thereof, the parties hereto shall have the right to change their respective addresses and specify as their respective addresses for the purposes hereof any other address in the United States of America

.1 Address of Owner:

Central Islip Union Free School District
50 Wheeler Road
Central Islip, New York 11722
Attn: Matthew Providente, Director of Buildings & Grounds

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With copy to:

Kevin Seaman, Esq.
PO Box
Stony Brook, New York 11___

- .2 Address of Contractor:
Energy Systems Group, LLC
9877 Eastgate Court
Newburgh, Indiana 47630
Attn: Steven W. Spanbauer, President

With a copy to:

Dan Shell, General Counsel
Energy Systems Group, LLC
9877 Eastgate Court
Newburgh, Indiana 47630

- .3 Address of Architect:
ECG Engineering, P.C. ("ECG")
811 West Jericho Turnpike – Suite 202W
Smithtown, New York 11787

- 13.4.3 Add the following new Section 13.4.3 to the General Conditions:

The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

- 13.5 TESTS AND INSPECTIONS

- 13.5.1 Change last sentence to read: "Unless otherwise provided, the Contractor shall bear all costs of other inspections, tests or approvals.

- 13.6. Add a new second sentence to Section 13.6 of the General Conditions that reads as follows: "For purposes of this Section 13.6, the parties agree to an interest rate of six (6%) percent per annum.

- 13.8.1 Contractor shall save and keep Owner, and Owner's construction fund, the Owner's financing entity construction fund, the contract sum and the Owner's funds and property free from all labor, mechanics and materials suppliers' liens and all other liens and payment claims, legal or equitable, arising out of Contractor's Work hereunder. In the event any such lien or claim is filed by anyone claiming by, through or under Contractor, Contractor shall remove and discharge same within ten (10) days of the filing thereof. Any such lien by a third party against the Owner must be discharged within such ten day period by the Contractor's and Surety's written undertaking to defend and indemnify Owner for all damages, costs, and expenses.

In addition to the foregoing, as set forth in Section "9.3.3.1" herein, in order to ensure that CONTRACTOR and its Lien Surety will take all necessary and appropriate action to discharge Liens, OWNER shall withhold from the Construction Agreement monies earned by CONTRACTOR an amount equal to One Hundred and Fifty (150%) percent of the amount of the Lien ("Lien Retention Sum") to be withheld by Owner until the Lien is voluntarily discharged by the Lienor's Discharge of Lien, by Court Order adjudicating a discharge of such Lien, or upon discharge of the Lien by Surety Bond issued by a Surety with an AM Best's rating of "A" licensed in New York State in the manner

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prescribed by statute.

It is expressly agreed by OWNER and CONTRACTOR that the aforesaid "Lien Retention sum" may be applied by OWNER towards payment of any obligation of CONTRACTOR to Lienors which CONTRACTOR or its Lien Surety has not paid, or towards payment of liability or legal defense and administrative costs resulting from any claim or cause of action as may be asserted by Lienors against OWNER for which Contractor and its Surety have not provided full and complete legal defense and indemnification.

The parties acknowledge and agree that the provisions for the establishment of the Lien Retention sum pursuant to the terms of this Agreement shall not relieve or limit in any manner the CONTRACTOR'S contractual obligations under the Construction Agreement and the General Conditions and Supplementary General Conditions thereunder to obtain a release, waiver or discharge of all Liens filed by its subcontractors and suppliers.

- 13.8 Add the following new Section 13.8 to the General Conditions: The Contract Documents contain the entire agreement between Contractor and Owner, and no oral statements or prior written matter not specifically incorporated in the Contract Documents shall be of any force or effect. The Contract may not be modified except by a written document executed by both parties.
- 13.9 Add the following new Section 13.9 to the General Conditions: The parties hereto hereby consent that venue of any action under the Contract shall be in Suffolk County, New York; provided, however, that venue of such action is legally proper in such county.
- 13.10 Add the following new Section 13.10 to the General Conditions: If a court of competent jurisdiction determines that any provision of the Contract is invalid or unenforceable, then the invalidity or unenforceability of that provision shall not effect the validity or enforceability of any other provision of the Contract, and all other provisions shall remain in full force and effect.
- 13.11 Add the following new Section 13.11 to the General Conditions: The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Contract or any amendments or exhibits thereto.
- 13.12 Add the following new Section 13.12 to the General Conditions: All section headings in the Contract are for convenience of reference only and are not part of the Contract, and no construction or inference shall be derived therefrom. Wherever required by the context, any gender shall include the other gender, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.
- 13.13 Add the following new Section 13.13 to the General Conditions: Termination of the Contract for any reason whatsoever shall not affect any right or obligation of any party which is accrued or vested prior to such termination, and any provision of the Contract relating to any such right or obligation shall be deemed to survive the termination of the Contract.
- 13.14 Add the following new Section 13.14 to the General Conditions: Contractor shall pay its own income tax and self-employment tax and shall not be entitled to receive any of the fringe benefits available to Owner's employees. Nevertheless, should Owner be required by any governmental agency to withhold income tax or, NYS Labor Department wage assessments or penalties, or pay Social Security or employment tax, provide medical coverage or pension benefits, etc., to Contractor or Contractor's employees or dependents, then the actual sums so paid shall be deducted from the Contract Sum.

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- 14.1.1 Modify the first line of Section 14.1.1 as follows: "30 consecutive days" is deleted, and replaced with: "45 consecutive days"
- 14.1.1.4 Delete Section 14.1.1.4 in its entirety
- 14.1.3 Delete in its entirety, and replace, as follows:
"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 Owner terminate the Contract and recover from the Owner payment for the value of work completed with payment therefor as established by the Schedule of Values stipulated by Architect and Contractor at the onset of Construction, together with an amount equal to four (4%) percent of the value of the uncompleted work determined by reference to the said Schedule of Values".
- 14.1.4 Delete in its entirety, and replace, as follows:
If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor and its subcontractors/Suppliers or their agents or employees, and the Owner has repeatedly failed to fulfill Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may upon fifteen (15) days written notice to Owner terminate the Contract and recover from the Owner payment for the value of work completed with payment therefor as established by the Schedule of Values stipulated by Architect and Contractor at the onset of Construction, together with an amount equal to four (4%) percent of the value of the uncompleted work determined by reference to the said Schedule of Values.
- 14.2.1 Delete in its entirety Section 14.2.1 of the General Conditions (including Subsections 14.2.1.1 through 14.2.1.4) and substitute in lieu thereof, the following:
- 14.2.1 The Owner may terminate the Contract if the Contractor:
- .1 repeatedly refuses or fails to supply sufficient numbers of skilled workers or suitable materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner;
 - .2 fails to make prompt payments to Subcontractors for labor, materials and/or equipment in accordance with the respective agreements between the Contractor and the Subcontractors;
 - .3 repeatedly disregards laws, ordinances, rules, regulations or orders of public authority;
 - .4 repeatedly disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
 - .5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws; or
 - .6 otherwise is in substantial breach of a provision of the Contract Documents.

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14.2.2 Delete in its entirety Section 14.2.2 of the General Conditions, and substitute the following:

When any of the above reasons exists, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's Surety, if any, five (5) days' written notice and Contractor fails to effect a cure within such five (5) days (except in cases of emergency as reasonably determined by Owner), terminate the services of the Contractor and may, :

1. exclude the Contractor from the site and take possession of the site and Project and of all materials, equipment, tools and construction equipment and machinery thereon owned, rented or leased by the Contractor; and
2. finish the Work by whatever reasonable method the Owner may deem expedient; and
3. accept assignment of subcontracts pursuant to Section "5.4"

14.2.3 Delete in its entirety Section 14.2.3 of the General Conditions, and substitute the following: 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 and Final Completion is achieved.

14.2.4 14.2.4 is deleted in its entirety, and replace with the following:

To the extent the costs of completing Work, including compensation for additional professional services and damages and expenses, exceed those costs which would have been payable to Contractor to complete the Work in the absence of Contractor's default, Contractor (and its Surety to the extent Contractor fails to do so) will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by the Owner and confirmed by the Architect. If the costs of completing Work, including compensation for additional professional services, and damages assessments and expenses, are less than the costs which would have been payable to Contractor to complete the Work in the absence of Contractor's default, Owner shall pay such excess sum to Contractor at Final Completion of the project.

14.2.5 Add the following new Section 14.2.5 to the General Conditions: It is recognized that: (1) if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth above in Sections 14.2.1 through 14.2.4 hereof. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back-charged against the Contract Sum.

14.2.6 Add: The Owner shall not be responsible for damages or for loss of anticipated profits on Work not performed on account of any termination; however, Owner may be responsible for termination for convenience recovery costs as specified in paragraph 14.2.7 herein.

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14.2.7 Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Subparagraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience and Contractor's sole remedy for wrongful termination shall be limited to the recovery of the value of work completed with payment therefor as established by the Schedule of Values stipulated by Architect and Contractor at the onset of Construction, together with an amount equal to four (4%) percent of the value of the uncompleted work determined by reference to the said Schedule of Values.

14.3.1 & 14.3.2 Delete in its entirety and replace, as follows:

"In addition to Owner's right to suspend, delay, or interrupt Contractor from any part of the Work pursuant to the Contract Documents, Owner may at any time, at will and without cause suspend, delay, or interrupt any part of the Work or any subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving three (3) day's prior written notice to Contractor, specifying the part of the Work or subcontract to be suspended, delayed, or interrupted, and the effective date of such suspension, delay, or interruption, as the case may be. Contractor shall continue to prosecute the part of the Work not suspended, delayed, or interrupted, and shall properly protect and secure, at Owner's sole cost and expense (as provided herein), the part of the Work so suspended, delayed, or interrupted, so far as is necessary in Owner's reasonable opinion. If the Work or any subcontract is so suspended, delayed, or interrupted, Owner shall incur no liability to Contractor by reason of such suspension, delay, or interruption except that for periods of Owner's suspension of work in excess of forty-five (45) days, as specified in section "8.3.3 & 4 herein (If so suspended, delayed or interrupted by Owner for a period of time in excess of forty-five (45) days, commencing the forty-sixth day Contractor shall be entitled to payment of reasonable standby fees (or at Owner's option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work, and increases in the cost of performing the Work (including profit provided said costs are authorized in advance by Architect and Owner. No payments shall be made by Owner, however, to the extent that such Work or subcontract is, was, or would have been suspended, delayed, or interrupted under the Contract Documents by another cause for which the Contractor is responsible, or an equitable adjustment is made or denied under another provision of the Contract. In case of such suspension, delay or interruption, Owner shall issue a Construction Change Directive or authorize a Change Order, making any required adjustment to the Contract Time and, and if appropriate, the Contract Sum, as specified above. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.4.1 Add new paragraph"14.4.1.1, as follows:

"In addition to Owner's right to remove Contractor from any part of the Work pursuant to the Contract Documents, Owner may at any time, at will and without cause, terminate any part of the Work or any subcontract or all remaining Work for any reason whatsoever by giving three (3) days prior written notice to Contractor, specifying the part of the Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. If the Work or any subcontract is so terminated, Owner shall incur no liability to Contractor by reason of such termination except that Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract), and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract, provided that said post-notice of termination Work is authorized in advance by Architect and Owner, together with Owner's payment of a sum equal to four (4%) percent of the value of the terminated work should the termination be without cause. For the remainder of the Work, if any, the Contract Documents shall remain in full force and effect."

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- 14.4.2 Delete Section 14.4.2 in its entirety; and replace with a new Section "14.4.2, as follows:
"Upon receipt of a written notice of termination for convenience from Owner, the Contractor shall), in accordance with instruction from the Owner, immediately proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:
1. cease operation as specified in the notice;
 2. place no further orders and enter into no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract.
 3. terminate all subcontracts and orders to the extent they relate to the Work terminated;
 4. proceed to complete the performance of the Work not terminated; and
 5. take actions that may be necessary, or that the Owner may direct, for the protection and preservation of terminated Work."
- 14.4.3 Delete Section 14.4.3 in its entirety, and add a new Section 14.4.3, as follows:
"Upon such termination, the Contractor shall recover its costs, expenses and profit as described in Section 14.4.1.1.as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the project site, delivered and stored in accordance with the Owner's instructions. Contractor's sole remedy for wrongful termination shall be limited to the recovery of value of work completed with payment therefor as established by the Schedule of Values stipulated by Architect and Contractor at the onset of Construction, together with an amount equal to four (4%) two percent of the value of the uncompleted work determined by reference to the said Schedule of Values. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits."
- 14.4.4 Add new Section 14.4.4: "The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, and (2) claims which the Owner has against the Contractor under the Contract and the value recovered by the Contractor for the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum."
- 14.4.6 Add new paragraph: "Upon a determination by legal means (e.g. court action, etc.) that termination of contractor pursuant to Subparagraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to subparagraph 14.1.3 and Contractor's exclusive remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Subparagraph 14.4.3."
- 14.4.7 Add new Section 14.4. 7:
"Contractor agrees and acknowledges that payments for the Work may have been obtained through obligations or bonds which have been sold after public referendum or as otherwise financed. In the event the Work is suspended or cancelled as a result of the order of any court, department entity or individual having jurisdiction, or in the event the Work is suspended or cancelled due to the fact that a court, agency, department, entity or individual having jurisdiction has issued an order, the result of which is the aforesaid obligations or bond are no longer available for payment for the Work, Contractor expressly agrees that it shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract), and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract, provided that said post-notice of

termination Work is authorized in advance by Architect and Owner, together with Owner's payment of a sum equal to four (4%) percent of the value of the terminated work. Contractor expressly waives any and all rights to institute an action, claim, cause of action or similar for any damages it may suffer as a result of the suspension or cancellation of the Work and/or its Contract pursuant to this section.

14.5 Add new paragraph "LIMITATION OF OWNER'S LIABILITY"

14.5.1 Add the following new Section 14.5.1 to the General Conditions: "The Owner shall not be liable to the Contractor for punitive damages on account of its termination of the Contractor and the Contractor hereby expressly waives its right to claim punitive damages against the Owner."

ARTICLE 15: CLAIMS AND DISPUTES:

15.1.2 Modify Section 15.1.2 of the General Conditions as follows: Change "21 days" to "14 days", and add the following sentence to the end of the paragraph: "A party who asserts a claim must include all claims then known to the party, as well as all claims as should have been known to the party based upon the occurrence of conditions or an event, and the failure to assert such claims shall constitute a waiver of all such claims."

15.1.5.1 Delete the third sentence: "In the case of a continuing delay, only one Claim is necessary"

Add the following Subparagraphs:

15.1.5.1.1 Add the following new Subsection 15.1.5.1.1 to the General Conditions: An application for extension of the Contract Time must set forth in detail the nature of each alleged cause of delay, the dates upon which such cause of delay began and ended, the number of days attributable to each of such causes, and the probable effect of such causes on the previously approved progress schedule.

15.1.5.1.2 Failure to comply with these requirements may, at the discretion of the Owner, be deemed sufficient cause for Owner to deny the application for an extension of time.

Add the following new Subsection 15.1.5.1.2 to the General Conditions:

In planning its construction schedule within the agreed Contract Time, it shall be assumed that the Contractor has anticipated the amount of adverse weather conditions normal to the site of the Work for the season or seasons of the year involved. Only those weather delays attributable to other than normal weather conditions will be considered by the Architect.

15.1.6 Modify Section 15.1.6 of the General Conditions as follows: Delete "stationed there" and "except anticipated profit arising directly from the Work" from Section 15.1.6.2. Additionally, in the next to the last sentence of Section 15.1.6, delete "in accordance with Article 14", and replace those deleted words with "pursuant to Article 14".

15.2.5 Delete the final sentence of 15.2.5, and replace with the following:

If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Initial Decision Maker, the Initial Decision Maker will notify the parties in writing that the Initial Decision Maker's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to legal proceedings to be instituted in the Supreme Court of the State of New York, Suffolk County. Upon expiration of such time period, the Initial Decision Maker will render to the parties the Initial Decision Maker's written decision relative to the Claim, including any change in the Contract Sum or Contract Time, or both. Such decision shall be final and binding on the parties but subject to legal proceedings to be instituted in the Supreme Court of the State of New York, Suffolk County.

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If there is a Surety and there appears to be a possibility of a Contractor's default, the Initial Decision Maker may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.

15.2.5.1 Add the following new Subsection 15.2.5.1 to the General Conditions: Any claim, or other matter in question between the Contractor and the Owner referred to the Initial Decision Maker, except those relating to artistic effect, and except those which have been waived by the making or acceptance of final payment, shall be decided within seven (7) days after the parties have presented their evidence to the Initial Decision Maker or have been given a reasonable opportunity to do so. The Initial Decision Maker's decision becomes final and binding upon the Owner and the Contractor unless either party wishes to bring proceedings in a court of competent jurisdiction in Suffolk County, New York.

15.2.5.2 Add the following new Subsection 15.2.5.2 to the General Conditions: Controversies and Claims Not Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract or the breach thereof, shall be subject to legal proceedings in the Supreme Court of the State of New York, Suffolk County and judgment may be entered, except controversies or Claims relating to aesthetic effect and except those waived as provided herein. Legal proceedings may be commenced when 45 days have passed after a Claim has been referred to the Initial Decision Maker as provided in this Article "15" and no decision has been rendered, unless the Initial Decision Maker's decision has been delayed by reason of the claimant's failure to submit evidence.

Legal proceedings may not be commenced until the earlier of (1) the date on which the Initial Decision Maker has rendered a final written decision on the claim, or (2) 45 days have passed after a Claim has been referred to the Initial Decision Maker as provided in this Article "15" and no decision has been rendered, unless the Initial Decision Maker's decision has been delayed by reason of the claimant's failure to submit evidence.

When a written decision of the Initial Decision Maker states that (1) the decision is final but subject to legal proceedings, and (2) a demand for a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision then failure to commence legal proceedings within said 30 days of the decision shall result in the Initial Decision Maker's decision becoming final and binding upon the Owner and Contractor. The Initial Decision Maker's decision may be entered as evidence in legal proceedings.

15.2.5.3 Legal proceedings must be commenced within the time limits specified in Subparagraphs of 15.2.5.2 above as applicable, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

15.2.5.4 Limitation on Consolidation or Joinder. No legal proceedings arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Initial Decision Maker, the Initial Decision Maker's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Initial Decision Maker, Owner, Contractor and any other person or entity sought to be joined.

Section 15.2.6 and Subsection 15.2.6.1 of the General Conditions are deleted in their entirety.

15.2.8 Add to the following to the end of the sentence of Section 15.2.8: "or Owner may withhold a portion of the Contract Sum pending discharge of a Subcontractor's or supplier's lien as further provided in these Supplementary General Conditions.

15.2.8.1 Add the following new Subsection 15.2.8.1 to the General Conditions:
There shall be no Claim submitted to the Initial Decision Maker with respect to public improvement

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liens and claims asserted by the Contractor's material suppliers and Subcontractors (and Sub-subcontractors), and the Owner may take all necessary and appropriate action as against the Contractor, including lien escrows and withholding of contract sums otherwise payable to Contractor, as authorized under law and the Construction Agreement and these Supplementary General Conditions.

15.3 and 15.4 Sections 15.3 and 15.4 of the General Conditions are deleted in their entirety.

ADD:

ARTICLE 16 PUBLIC CONTRACTS

16.1 Add a new Section 16.1 to the General Conditions: Section 103-a of the General Municipal Law and 139-a of the State Finance Law of the State of New York, provides the following is sufficient ground for cancellation of contract by municipal corporations, fire districts and the State:

". . . upon the refusal of a person, when called before a grand jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract,

- (a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that
- (b) any and all contracts made with any municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or with any fire district or any agency or official thereof on or after the first day of September nineteen hundred sixty, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be canceled or terminated by the municipal corporation or fire district without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination shall be paid."

16.2 Add a new Section 16.2 to the General Conditions: Pursuant to Sections 103-b of the General Municipal Law and 139-b of the State Finance Law of the State of New York, the following is sufficient disqualification to contract with Municipal corporations, fire districts and the State:

"Any person who, when called before a grand jury, to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority, or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or with any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed"

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16.3 Add a new Section 16.3 to the General Conditions: Section 103-d of the General Municipal Law and Section 139-d of the State Finance Law of the State of New York refers to the statement of non-collusion in bids and proposals to political subdivisions of the state, fire district and the state, as follows:

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

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

16.4 Add a new Section 16.4 to the General Conditions: Section 103-e of the General Municipal Law of the State of New York states - Conspiracies to prevent competitive bidding on public contracts:

"1. A person or corporation who shall willfully, knowingly and with intent to defraud, make or enter into, or attempt to make or enter into, with any other person or corporation, a contract, agreement, arrangement or combination to submit a fraudulent or collusive bid; or to refrain from submitting a bona fide competitive bid, to any board, officer, agency, department, commission or other agency of the state or of a public corporation on a contract for public work or purchase which has been advertised for bidding, shall be guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand (\$5,000.00) dollars or by imprisonment for not longer than one (1) year, or by both such fine and imprisonment, and if a corporation by a fine not exceeding twenty thousand (\$20,000.00) dollars. An indictment or information based upon a violation of any provision of this section must be found within three (3) years after its commission."

16.5 Add a new Section 16.5 to the General Conditions:

Wage Rates

The Labor Law of New York State provides, among other things, that it shall be the duty of the fiscal officer to make a determination of schedule of wages to be paid to all laborers, workmen and mechanics employed on public work projects, including supplements for welfare, pension, retirement, vacation and other benefits, in accordance with prevailing practice in the locality. The Contractor shall comply with all requirements of this law as it applies to this Project and locality.

The rates of wages determined by the New York State Industrial Commissioner pursuant to the Labor Law are set forth as per the current schedule included in this Project Manual at the end of these Supplementary Conditions.

Subsection 3.4 (a) of the Regulation promulgated by the Treasurer pursuant to P.L. 1975, c. 127,.

Note: 16-1 through 16.11 pending review to determine legality of omitting such provisions

16.6 Add a new Section 16.6 to the General Conditions: The following statutory requirements shall be applicable to this Agreement:

1. The provisions of New York Energy Law §§9-101 through 9-103 regarding energy performance contracts shall apply to this Agreement.
2. The Project includes the provision of energy services including the installation, maintenance or management of energy systems or equipment to improve energy efficiency, or produce energy, in exchange for a portion of the energy savings or revenues.
3. The duration of the energy performance contract shall not exceed the lesser of eighteen years or the reasonably expected useful life of the equipment subject to such contract.
4. The energy performance contract shall contain the following clause: "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."
5. This Project shall have been procured by issuing and advertising a written request for proposals in accordance with policies, procedures or guidelines that the agency, municipality or public authority has adopted pursuant to applicable state laws.
6. This Project is also subject to the procedures and Regulations of the Commission of Education, Section 155.20 (Energy performance contracts, 8 NY ADC 155.20), current with amendments included in the New York State Register, XXXIX, Issue 7 dated February 15, 2017.

END OF SECTION 00500

RIDER I

Rider I to the Construction Agreement (AIA A-101), made this 23 day of September, 2020, by and between Central Islip Union Free School District, Central Islip, New York (hereinafter referred to as "District" or "Owner" or "School District") and Energy Systems Group, LLC, an Indiana limited liability company with principal offices located at 9877 Eastgate Court, Newburgh, Indiana 47630 (hereinafter referred to as "Contractor" or "CONTRACTOR" or "Energy Performance Contractor").

1. The parties hereby incorporate by reference, as if fully set forth herein as a Rider to the Construction Agreement AIA A-101 dated September 23 2020 ("Construction Agreement"), the following documents and instruments:

- Exhibit A - Comprehensive Energy Audit (or "CEA")
- Exhibit B - Opinion of Owner's Counsel
- Exhibit C - State Specific Statutory Requirements
- Exhibit D - Wage and Hours Provisions; Prevailing Wage Determination
- Exhibit E - Construction Activities Coordination with School Operations
- Exhibit F - Agreement between Owner and ECG

If there is a conflict between the provisions of this Rider "I" and the Construction Agreement, the provisions of the Construction Agreement shall control with respect to the subject matter.

2. Scope of Project. For purposes hereof, the term "Project" shall mean and include the installation of the energy conservation measures ("EC Measures") and related upgrades at Owner's Facilities, defined within Section "5" of the CEA, as well as the post-construction Training, Performance Verification & Maintenance services as described within Section "6." of the CEA. For purposes of this Contract, the term "Work" shall mean and include the scope of work required to implement the EC Measures pursuant to the CEA and Construction Agreement.

2.1 Dodd-Frank Municipal Advisor Rule Statement: CONTRACTOR is retained by Owner as an engineering and energy services firm to design and deliver energy-related and other infrastructure solutions described in the CEA. Owner acknowledges that CONTRACTOR is not a financial advisor or municipal advisor as contemplated under the U.S. securities laws, is not providing recommendations regarding any municipal financial product or the issuance of municipal securities, and does not owe a fiduciary duty to Owner under section 15B of the Securities

Exchange Act, or otherwise. Owner acknowledges that as a commercial entity CONTRACTOR is influenced by its own interests, which will not always be the same as Owner's. Owner has had the opportunity to retain and consult with such financial, municipal, legal or other advisors as it may deem appropriate regarding this Project.

3. General Obligations and Rights of Contractor. Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, in a good and workmanlike manner, and in compliance with all applicable laws and regulations. Contractor shall at its sole cost and expense apply for, secure, and obtain all necessary permits and licenses which may be required in connection with the Project as well as any operation and/or maintenance of E.C. Measures required by the Construction Agreement and this Rider I. If, however, Contractor cannot procure a required license or permit in light of a requirement that the Owner is required to do so, the Owner will procure the same at Contractor's sole cost and expense.

3.1 Warranty. Warranty provisions of Supplementary General Conditions Article "3.5.1- 3.5.9" are further supplemented, as follows: CONTRACTOR warrants that the materials and equipment furnished by either it, or its subcontractors, will be of good quality and new; that the Work will be free from defects and that the Work and services will conform to the requirements of the Contract Documents. CONTRACTOR further warrants that the design, engineering, and installation services it performs will be performed consistent with good engineering practices and that such Work performed by CONTRACTOR and its subcontractors is warranted to be free from defects in materials and workmanship for a period of two (2) years from the date of execution of the Delivery and Acceptance Certificate by the School District with respect to FINAL Completion of an EC Measure by building. Any manufacturers' and material suppliers' warranties which exceed this two (2) year period shall be assigned to School District. All equipment warranties are conditioned on the equipment being operated and maintained in accordance with the manufacturer's instructions.

EXCEPT as specified hereinabove and in Article "3.5", Subsection "3.5.9", ESG MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTUORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS

FOR A PARTICULAR USE OR PURPOSE. UNDER NO CIRCUMSTANCES WILL ESG BE LIABLE TO OWNER UNDER THIS TWO YEAR WARRANTY, FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.

3.2 Energy Performance Savings Guaranty

The Contractor guarantees Energy Performance Savings for a term of eighteen (18) years as set forth in Article 3.5.9 of the Supplementary General Conditions.

3.3 Indemnification. To the fullest extent allowable by law, Contractor shall indemnify, defend, and hold harmless Owner, the agents, officers, employees, and representatives of Owner (herein the "Indemnified Owner Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Project by Contractor, any subcontractor, or the agents, employees, or representatives of Contractor or any subcontractor, including any injury (including death) sustained by or any damage to the property of, any person; provided however, that Contractor shall not be responsible for any injury (including death), damage, or loss (including reasonable attorney's fees and expenses) that is caused by the sole negligence of Owner.

To the fullest extent allowable by law, Contractor agrees to indemnify, save and hold Owner, its successors and assigns, and any assignee of Contractor, harmless from the payment of any sum of money whatsoever (including reasonable attorney's fees and expenses) on account of any laborer's, mechanic's, materialmen or any other lien against Owner's property related to Contractor's performance of the Project, except to the extent the lien is caused by the fault of Owner.

3.4 Bonds. (See Article "11" Supplementary General Conditions)

3.5 Guaranteed Savings. The Project will result in Energy Savings as detailed within Section 6. of Exhibit A and SGCs 3.5.1.

Contractor represents and warrants the requirements set forth in Exhibit C, State Specific Statutory Requirements, will be met.

3.6 Intentionally Omitted.

3.7 Insurance. (SEE Article "11" Supplementary General Conditions)

3.8 Engineering Services. (See SGCs Article "9.1.1)

4. Builder's Risk Insurance. (SEE Article "11" Supplementary General Conditions)

4.1. Title and Risk of Loss. Notwithstanding anything in this Agreement to the contrary, the risk of loss for all equipment and materials provided by Contractor or any subcontractor shall transfer to the Owner upon Contractor achieving "Substantial Completion" of the Project Work. See Article 10.2.7.1 Supplementary General Conditions.

5. Contract Price and Payments. See AIA A-101 Construction Agreement Article "4", the AIA A-201 (2007 Ed.) General Conditions and the Supplementary General Conditions Article "9".

5.1 Applications for Payment: Payment of the Contract Price shall be made in monthly installments based upon Contractor's progress in completing the installation of the Project as determined and approved by the Project Engineer, except that Contractor shall be paid an initial payment with respect to the Contract Price in an amount of 10% of the Contract Price, the request for which shall be submitted to Owner upon the execution of this Agreement and satisfaction of the financing and financing closing contingency of paragraph "12.19" herein. Such initial payment shall be to reimburse Contractor for work, including work performed prior to the execution of the Agreement.

5.2 Progress Payments: With respect to monthly progress payments, Contractor shall submit to Owner each month, an application for payment on a form mutually agreeable to Contractor and Owner, together with Waivers of Lien in a form required by Owner from all subcontractors and suppliers having provided labor or materials during the previous monthly period. Owner shall pay or cause to be paid such invoice within 30 days of receipt. Notwithstanding anything herein to the contrary, timeliness of payment and interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law. If the provisions of the previous sentence do not apply in a particular

circumstance(s), and Contractor has not been declared by Owner to be in contractual default, Owner shall pay Contractor at an annual rate of six (6%) percent per annum interest for any payment that is not timely paid.

5.3 Completion and Inspection; Acceptance. When Contractor reasonably believes that the Project is complete, it shall notify Owner that the Project is ready for inspection and acceptance (herein, "Substantial Completion"). Within five business days following such notification of Substantial Completion, Owner shall commence to conduct such inspections as it deems necessary or appropriate in order to determine that the Project is free from defects and that the installation of the Project has been completed in conformity with the Contract Documents. If any aspect of the Project shall be incomplete as of the date of such inspection, Owner shall notify Contractor in writing as to the items that render the Project incomplete (such writing herein referred to as the "Punch List") and withhold an amount equal to 200% of the cost of all such incomplete work.

Contractor shall, at its expense and without further cost to Owner, undertake to perform such work as will complete the Punch List in compliance with the Contract Documents as soon as practicable. Contractor retains the right to dispute that an item or items on the Punch List is required by the Contract Documents. If Contractor does not satisfactorily complete the Punch List by a date 30 days following Owner's submission of the Punch List (herein the "Completion Date"), Owner shall have the right to order Contractor to stop any further work in respect of the Project and Owner shall be entitled to complete the Punch List. In such event, Contractor shall be responsible for all costs incurred by Owner in completing the Punch List and Owner shall have the right to deduct all costs from any payment then or thereafter due to Contractor. If such cost exceeds the balance of the Contract Price then or thereafter due Contractor, Contractor shall pay such excess to Owner within 10 days following Owner's demand therefor.

Owner will give Contractor prompt written notice of acceptance of the Project, when the following conditions have been met:

- A. Contractor shall have completed the Punch List to Owner's reasonable satisfaction and Contractor shall have corrected any other non-conforming items or condition, if any, reported to it by Owner;

- B. Contractor shall have furnished to Owner's reasonable satisfaction, evidence that all equipment and labor costs incurred or accrued in connection with the Project have been paid; and
- C. Contractor shall have delivered to Owner all drawings and documents required to be furnished by Contractor pursuant to the Contract Documents.

If Owner is required to complete the Punch List, the date of Final Acceptance shall be extended to the date upon which the Project is completed by Owner, or any person retained by Owner, in accordance with the Contract Documents.

Final Payment. Any sums due and owing in respect of the Contract Price shall be payable to Contractor within 30 days after the date of Final Completion.

6. Independent Contractor. It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. Neither party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other party. All persons employed by Contractor in connection with the Project shall be paid directly by Contractor, and shall be subject to Contractor's orders and supervision; provided, however, that nothing in this paragraph "6" shall be deemed to be a waiver of Owner's right to use its Facilities or property. It is understood and agreed that the Contractor, its employees, agents, subcontractors, and employees of such agents and subcontractors, shall adhere to the Owner's policies with respect to conduct on the Owner's property as well as any and all federal, state, and local laws, rules, ordinances, municipality policies, and procedures applicable to construction projects on municipality premises.

7. Inspection; Defective Work. Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the Work by Owner. It shall, within forty-eight hours after receiving written notice from Owner to that effect, remove from the Facilities all materials that fail to conform to the Contract Documents.

8. Termination. See Article "14" Supplementary General Conditions

9. Contractor to Furnish Required Statements. Contractor shall provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation or by local ordinances or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and Contractor hereby acknowledges receipt of notice from Owner to furnish same.

10. Delays. Should Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of Owner or by any other damage, act or cause beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the Work shall be extended for a period equivalent to the time lost by reason of such event. If Contractor is delayed by actions or inactions of Owner, ECG or their agents or employees, then the time herein fixed for the completion of the Work shall be extended for a period equivalent to the time lost by reason of such event(s) and Owner shall be required to reimburse Contractor for its additional costs incurred as a result of such delay(s), which delays in total exceed forty-five days in duration with such costs commencing the 46th day thereafter, provided that there are no concurrent delays which are the responsibility of the Contractor or its subcontractors. However, Contractor shall be required to provide notification to the Owner within 5 days of a delay and allow the Owner the opportunity to remedy the delay.

11. Nondiscrimination in Hiring Employees; Prevailing Wages.

11.1 Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, or ancestry or military status. Breach of this provision may be regarded as a material breach of this Contract.

11.2 Since this Contract involves the construction, alteration, or repair of a public building or public work, Contractor agrees:

11.2.1 That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, Contractor, subcontractor or any person acting on behalf of Contractor or subcontractor shall not, by reason of race, religion, color, sex,

national origin, or ancestry, discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates; and

11.2.2 That Contractor, a subcontractor, or any person on his or their behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin, or ancestry.

11.3 If required by applicable law, Contractor or any subcontractor of Contractor shall be required to pay for each class of work on such project a scale of wages which shall in no case be less than the prevailing wages being paid in the immediate locality for such class of work. As part of this Contract, there is incorporated by reference herein the prevailing scale of wages.

11.4 The Contractor and all subcontractors shall submit to the School District, within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record, subscribed and affirmed as true under penalties of perjury, as provided by Article 8, Section 220 of the NYS Labor Law. The Contractor shall require that appropriate procedures are in place to ensure compliance with this provision and all other requirements under Section 220 of the NYS Labor Law.

The original payrolls or transcripts shall be preserved for three years from the completion of the Work on the awarded project.

12. Miscellaneous Provisions.

12.1 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of New York except where the Supremacy Clause of the U.S. Constitution applies. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Suffolk, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or forum non conveniens to the conduct of and proceeding in any such court.

12.2 Notice and Service of Process. Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to Contractor, or personally delivered to Owner's authorized agent in the case of a Notice to be given to Owner, or (ii) deposited in the United States mail, registered or certified, postage prepaid, and properly addressed; or (iii) by Fax or e-mail transmittal to the recipient, as follows:

If to Owner: (i) Matthew Providente, Director of Buildings & Grounds
Central Islip Union Free School District
50 Wheeler Road
Central Islip, New York 11722
Fax: 631 348 5207
e-mail: mprovidente@centralislip.k12.ny.us

with copy to: (ii) Kevin Seaman, Esq.
300 Rhododendron Road
Stony Brook, New York 11790
Fax: 631 751 3700
e-mail: kasbrown@optonline.net

If to Contractor: Steven W. Spanbauer, President
Energy Systems Group, LLC
9877 Eastgate Court
Newburgh, Indiana 47630
Fax: (812)492-8425
e-mail: sspanbauer@energysystemsgroup.com

Either party may change its address or its designated representative for receipt of notices by submitting a notice in compliance with this Section.

If Owner has questions about billing, invoices or any other accounting or related administrative issues, it can make contact (which will not constitute Notice) with:

Drew E. Bailey, Vice President, Finance & Accounting
Energy Systems Group, LLC
9877 Eastgate Court
Newburgh, IN47630
(812) 492-3754
e-mail: dbailey@energysystemsgroup.com

For purposes of service of process for any purposes contemplated or allowed by the State Civil Practice Law & Rules, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested to the same address for which service of Notice under this Agreement is required. Service of process hereunder shall be complete upon Contractor's actual receipt of process or upon the Owner's receipt of the return thereof by the United States Postal Service as refused. The Contractor must promptly notify the Owner, in writing, of each and every change of its Notice address above to which service of process can be made. Service by the Owner to the last known address of Contractor shall be sufficient. The Contractor shall have twenty (20) calendar days after service hereunder is complete in which to respond.

12.3 Waivers. The failure of either party hereto to require compliance with any of the provisions of this Agreement shall not affect that party's right to later enforce the same except as otherwise provided in the Construction Agreement and the General and Supplementary General Conditions of Contract Article "8" referencing strict deadlines for Contractor claims for an extension of time to perform its contractual obligations. It is agreed that the failure by either party to require the other party's performance of any other term of this Agreement or the waiver or non-enforcement of any breach hereof will not be held or deemed to be a waiver of the other party's subsequent failure to perform the same or any other term or condition of this Agreement or any breach thereof.

12.4 Tests. If the Contract Documents or the laws, ordinances, rules, or regulations of any public authority having appropriate jurisdiction require inspection, testing, or approval of any of the Work, Contractor shall give Owner timely notice of Contractor's readiness for such inspection, testing, or approval and of the date thereof so that Owner may be present to observe such inspection, testing, or approval by such public authority. Contractor shall be responsible for and

pay all costs for any such inspection, testing, or approval unless otherwise provided for herein. All required licenses, permits, or certificates applicable to any such inspection, testing, or approval shall be obtained by Contractor and promptly delivered to Owner.

12.5 Hazardous Materials. Contractor and Owner agree that the EC Measures to be installed by the Contractor pursuant to this Agreement do not require the handling or abatement of Hazardous Materials (defined below), and the handling or abatement of Hazardous Materials is not within Contractor's Scope of Work and is not Contractor's responsibility except as otherwise set forth in paragraph "12.6" herein . If Hazardous Material is discovered, Contractor will follow the process described below.

The Contractor is responsible for the costs of remediation and all other losses and damages to the Owner resulting from any release by Contractor of any Hazardous Materials it brings upon the Owner's Facilities. If, however, Contractor discovers materials at the Facilities it reasonably believes to be pre-existing Hazardous Materials, then the Contractor will immediately:

12.5.1. Notify the Owner in writing of the discovery of the hazard and provide all relevant information;

12.5.2. Discontinue Work in the affected area leaving the suspected Hazardous Material uncovered as it was found (taking reasonable precautions to protect persons and property and prevent the movement, spread or disturbance of the suspected Hazardous Material in accordance with applicable laws, rules, or regulations);

12.5.3. Contractor may resume Work in the affected area only after the Owner has determined by reasonable means that the material is either not a Hazardous Material or has been mitigated in accordance with applicable laws, rules, or regulations; and

12.5.4. If the remedy directed by the Owner results in a delay to the Work's critical path, and if Contractor did not cause, suffer, or permit the release of the Hazardous Material, then the time herein fixed for the completion of the Work shall be extended for a period equivalent to the time lost by reason of such event.

12.6 Asbestos-Containing Materials. Notwithstanding anything to the contrary contained in Section 12.5 above, Contractor shall be responsible for the abatement, cleanup, control, removal or disposal of asbestos-containing materials ("ACM"), but only to the extent such ACM is disturbed or impacted by the performance of the Work. Contractor hereby represents and warrants that it has reviewed and will become familiar with the District's AHERA Triennial Reports, the District's Asbestos Management Plan and the District's asbestos ceiling tile surveys and any and all other testing results or documentation related to such materials that have been provided to Contractor by District and shall ensure that its subcontractors review said reports, surveys and other documentation. Removal, abatement or clean-up of ACM impacted by the Scope of Work is being undertaken as part of the Agreement. Contractor shall cause to be performed such removal/abatement and clean-up in accordance with all applicable Federal, State and local laws, codes, rules, regulations and ordinances.

Contractor shall be fully responsible for the failure of Contractor and/or its subcontractors to perform the Work in accordance with Section "12.5", supra and this Section 12.6. Contractor shall defend and hold harmless District, its officers, trustees, and employees from any and all actions, claims, costs, causes of action, damages, fines, fees, penalties, suits of any kind to the extent arising directly or indirectly from the negligent performance of ACM related Work by Contractor or its subcontractors, and shall further cause its subcontractors to defend and hold harmless District, its officers, trustees, and employees from any and all actions, claims, costs, causes of action, damages, fines, fees, penalties, suits of any kind arising directly or indirectly from the performance of ACM related Work by such subcontractor. Consistent with applicable Laws, District shall supply Contractor with any information in its possession relating to the presence of ACM in areas where Contractor undertakes any Work or M&V Services that may result in the disturbance of ACM. If either District or Contractor becomes aware of or suspects the presence of ACM that has not previously been identified in District's AHERA Report, the District's asbestos ceiling tile surveys, and other testing results or documentation set forth above and that may be disturbed by Contractor's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other, and the parties shall meet to discuss how to proceed. District may request that Contractor provide a calculation of the cost of enclosing, removing, encapsulating or otherwise abating such ACM in the areas in which Work or M&V Services are to be performed in accordance with applicable code, laws, rules, regulations, ordinances and guidelines. Upon receiving said calculation, the parties will meet and mutually agree upon how to proceed, including but not limited to the following options: (i) arranging to have said ACM abated at the District's cost; or (ii) District paying Contractor to cause such ACM to be abated; and/or (iii) revising the scope of Work to include additional ACM abatement subject to review and approval of SED.

For purposes of this Agreement, "Hazardous Materials" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under applicable law relating to or addressing public or employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product, polychlorinated biphenyls or mercury. "Hazardous Materials" specifically includes mold.

Contractor shall indemnify and hold harmless the District from any liability associated solely with obligations contained within this Agreement concerning the removal, abatement and/or disposal of asbestos containing and hazardous materials undertaken by Contractor, its employees, agents, representatives or its subcontractors or agents pursuant to this Agreement.

In-Scope Hazardous Materials as defined under this Paragraph "13.5.2" shall include, but not be limited to, all lighting bulbs, ballasts, starters; all HVAC Unit components, pumps and refrigerant; all roofing materials and sub-roofing materials, as will be set forth in Contractor's scope of work.

12.7 Amendments. No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto.

12.8 Headings. The headings of sections and subsections of this Agreement are for convenience of reference only and shall not affect the meaning or construction of any provision hereof.

12.9 Severability. In the event any clause or provision of the Construction Agreement or any part hereof shall be declared invalid by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of the Agreement.

12.10 Assignments and Subcontracting. The Contractor shall not assign this Agreement in whole or in part to any other party without first obtaining the written consent of the Owner, which consent may be withheld in Owner's sole discretion.

12.11 Non-Appropriation. 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.

12.12 Commissioner Approval. This Construction Agreement shall not be executory, and shall be contingent upon approval of the Commissioner of Education obtained by the District pursuant to 8 NY ADC 155.20.

12.13 Third Party Beneficiaries. Except as may be specifically provided for in this Agreement, the parties hereto do not intend to create any rights for, or grant any remedies to, any third party beneficiary of this Agreement.

12.14 Non-Collusive Bidding Certification. By this Agreement, in accordance with Section 139-d of the State Finance Law and/or Section 103 of the General Municipal Law, the Contractor herein warrants and certifies to the best of its knowledge and understanding and subject to the penalties for perjury that its proposal was accepted by Owner independently and without collusion aimed at restricting competition. The Contractor further warrants and certifies that, at the time it submitted its proposal on May 30, 2019, an authorized and responsible person executed and delivered to the Owner on behalf of the Contractor, an Official Statement adopting Owner's minimum contract standards and confirming Contractor's non-collusive certification herein.

Contractor further certifies as follows:

- A. By submission of its Response to the Owner's Request For Proposals, Contractor certifies under penalty of perjury that to the best of its knowledge and belief:
 - 1. The prices in the Response to Request for Proposals and the Construction Agreement have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other person or entity having submitted a Response to Request For Proposal, or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in the Request For Proposal and Construction Agreement have not been knowingly disclosed by the Contractor directly or indirectly to any other competitor; and
3. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a Response to Owner's Request For Proposals for the purpose of restricting competition.

12.15 AGREEMENT AND CERTIFICATION AS TO WAGE PAYMENTS

- a. The undersigned certifies that he has read and is familiar with the attached schedule of prevailing Wage Rates. The Contractor agrees that he and all subcontractors and all other persons contracting with Contractor to do work on this Contract, if the same be awarded by him, shall pay and provide to all persons employed by them the said prevailing Wage Rate and benefits, and that he will comply with the provisions of Section 220, of the NYS Labor Law. Contractor further agrees that all of his books and records, and the books and records of all subcontractors and other persons contracting with him, shall be open for inspection to verify said wages and benefits have been paid.
- b. Upon completion of said Contract, and prior to payment of moneys retained hereunder by the Owner, the undersigned agrees to certify to the Owner, in form satisfactory to it, that said prevailing wages and benefits have been so paid.

12.16 Set-Off Rights. Owner shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the Owner's option to withhold for the purposes of set-off, any monies due to the Contractor under this Agreement up to any amounts due and owing to the Owner with regard to this Agreement, any other contract with any School District, including any contract for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the Owner for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The Owner shall exercise its set-off rights in accordance with normal School District practices including, in cases of set-off pursuant to an audit, the finalization of such School District audit by the State agency, its representatives, or the State Comptroller.

12.17 Record Retention. Contractor will keep and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to the performance of this Agreement (hereinafter, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, Attorney General, and any other person or entity authorized to conduct an examination, as well as the Owner or agency or agencies involved in this Agreement, shall have access to the Records at a mutually agreeable and reasonable venue within the State of New York, for the term specified above for the purposes of inspection, auditing, and copying of Records. The Owner shall take reasonable steps to protect from public disclosure any of the Records pertaining to this Contract which have been generated by Contractor and which are exempt from disclosure under Section 87 of the Public Officer's Law (the "Statute") provided that: (i) the Contractor shall timely inform the appropriate Owner official, in writing, that the Records should not be disclosed; and (ii) the Records shall be sufficiently identified; and (iii) designation of the Records as exempt under the Statute is reasonable. If the Records are not exempt from disclosure under Section 87 of the Public Officers Law, the Records will be disclosed pursuant to law. Nothing contained herein shall diminish, or in any way adversely affect, the Owner's right to discovery in any pending or future litigation.

12.18 International Boycott Prohibition. In accordance with Section 220-f of the NYS Labor Law and Section 139-h of the State Finance Law, Contractor agrees, as a material condition of the Contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations under the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contractor's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify the Owner within five (5) business days of such conviction, determination or disposition of appeal.

12.19 Contingency. This Agreement is expressly contingent upon the Owner successfully securing and closing financing that, in its reasonable commercial judgment, is sufficient to fund the Project. The Owner shall use its best reasonable efforts to complete and close such financing. The Agreement may be terminated by Contractor or Owner upon written notice in the event that this contingency is not satisfied within ninety (90) days of the date of this Agreement, and in such event the Parties shall have no further obligations hereunder, nor shall either party be liable for any damages alleged to have occurred as a result of the termination of this Agreement.

12.20 Authority to Execute Contract. This Contract is executed by Owner pursuant to a resolution of Owner duly adopted at its regular meeting called and held on the 9 day of MARCH, 2020.

All terms and conditions of the Construction Agreement shall remain in full force and effect, unless expressly superseded by the terms of this Rider I, and in the event that there is a conflict between the provisions of the Construction Agreement and this Rider I, the terms and conditions of the Construction Agreement shall take priority and control.

[Remainder of page intentionally left blank; signature page to follow.]

CENTRAL ISLIP UNION FREE SCHOOL DISTRICT

By 

Its BO PRESIDENT, NORMAN A WITTE


ENERGY SYSTEMS GROUP, LLC

DocuSigned by:
By 
Gregory Knight

Its EVP



CENTRAL ISLIP UNION FREE SCHOOL DISTRICT

By 

Its BO PRESIDENT NORMAN A WATSON

ENERGY SYSTEMS GROUP, LLC

By _____

Its _____

SCHEDULE 1

FINAL ACCEPTANCE CERTIFICATE

(The parties agree and acknowledge that this Final Acceptance Certificate shall be used to signify the Owner's Final Acceptance of the Work pursuant to Section 5.2.2 of the Agreement.)

Energy Systems Group, LLC
9877 Eastgate Court
Newburgh, IN 47630

Re: Guaranteed Energy Savings Performance Contract, dated as of September _____, 2020 (the "Agreement"), between Energy Systems Group, LLC (the "Contractor") and Central Islip Union Free School District (the "Owner").

Ladies and Gentleman:

In accordance with the Agreement, Owner hereby certifies and represents to, and agrees with, Energy Systems Group, LLC as follows:

The Work (as defined in the Agreement) has been delivered, installed, and accepted as of _____ (the "Final Acceptance Date").

Owner has conducted such inspection and/or testing of the Work, as it deems necessary and appropriate, and hereby acknowledges that it accepts all of the Work for all purposes.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, a default or breach of contract exists at the date hereof.

Sincerely,

CENTRAL ISLIP UNION FREE SCHOOL DISTRICT

By: _____

Its: _____

Date: _____

SCHEDULE 2

AIA Document G704[®] - 2017

Certificate of Substantial Completion

PROJECT: <i>(name and address)</i>	CONTRACT INFORMATION: Contract For Date	CERTIFICATE INFORMATION: Certificate Number: Date:
OWNER: <i>(name and address)</i>	ARCHITECT: <i>(name and address)</i>	CONTRACTOR: <i>(name and address)</i>

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.
(Identify the Work, or portion thereof, that is substantially complete.)

ARCHITECT <i>(Firm Name)</i>	SIGNATURE	PRINTED NAME AND TITLE	DATE OF SUBSTANTIAL COMPLETION
------------------------------	-----------	------------------------	--------------------------------

WARRANTIES
 The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:
(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)

WORK TO BE COMPLETED OR CORRECTED
 A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:
(Identify the list of Work to be completed or corrected.)

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within () days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: \$

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:
(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion:

CONTRACTOR <i>(Firm Name)</i>	SIGNATURE	PRINTED NAME AND TITLE	DATE
OWNER <i>(Firm Name)</i>	SIGNATURE	PRINTED NAME AND TITLE	DATE

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EXHIBIT A
COMPREHENSIVE ENERGY AUDIT

[Attached Separately]

EXHIBIT B
OPINION OF OWNER'S COUNSEL

Energy Systems Group, LLC
And Its Assignee
9877 Eastgate Court
Newburgh, IN 47630

Ladies and Gentlemen:

I am counsel for the Central Islip Union Free School District ("Owner"). In order to render this opinion I have reviewed the Construction Agreement (the "Agreement"), dated as of September ____, 2020 between Owner and Energy Systems Group, LLC ("Contractor"), and other documents and instruments related to the Agreement or otherwise necessary to render this opinion, as well as all proceedings taken by Owner in connection with the Agreement. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement. Based upon the foregoing it is my opinion that:

1. Owner is a duly organized and validly existing ~~municipality~~ union free school district of the State of New York and is a political subdivision within the meaning of Section 103 of the Internal Revenue Code and related regulations and rulings.
2. Owner has the power and authority to execute and perform the Agreement and to purchase EC Measures from Contractor thereunder.
3. The Agreement and related instruments and documents:
 - a) Have been duly authorized by appropriate resolutions;
 - b) Do not contravene and will not violate or result in a default under any charter, certificate of incorporation, by-laws, indenture, or any other agreement or instrument by which Owner or its property is bound or to which Owner is a party;
 - c) The Agreement has been duly executed by the duly authorized officers of Owner, and does and will constitute the legal, valid, and binding obligations of Owner enforceable against Owner in accordance with their respective terms.
4. No approval or consent is required from any governmental authority with respect to the entering into or performance by Owner of the Agreement and the transactions contemplated thereby or if any such approval is required it has been duly obtained.
5. No litigation or other proceedings are pending or, to the best of my knowledge, threatened against Owner which would adversely affect Owner's legal title to the EC Measures or, if decided adversely to Owner, would materially affect its financial condition.

This opinion is for the benefit of the addressee and any Assignee, and you and such Assignee and any counsel engaged by you or such Assignee shall be entitled to rely hereupon, including such counsel's reliance hereupon in giving its opinion addressed to other persons.

Very truly yours,

EXHIBIT C

STATE SPECIFIC STATUTORY REQUIREMENTS FOR NEW YORK AGENCIES, MUNICIPALITIES AND PUBLIC AUTHORITIES

The Owner and the Contractor agree that the following statutory requirements shall be applicable to this Agreement:

1. The provisions of New York Energy Law §§9-101 through 9-103 regarding energy performance contracts shall apply to this Agreement.
2. The Project includes the provision of energy services including the installation, maintenance or management of energy systems or equipment to improve energy efficiency, or produce energy, and to the extent applicable, in exchange for a portion of the energy savings or revenues.
3. The duration of the energy performance contract shall not exceed the lesser of eighteen years or the reasonably expected useful life of the equipment subject to such contract.
4. The energy performance contract shall contain the following clause: "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 thereof 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."
5. This Project shall have been procured by issuing and advertising a written request for proposals in accordance with policies, procedures or guidelines that the agency, municipality or public authority has adopted pursuant to applicable state laws.
6. This Project is also subject to the procedures and Regulations of the Commission of Education, Section 155.20 (Energy performance contracts, 8 NY ADC 155.20), current with amendments included in the New York State Register, XXXIX, Issue 7 dated February 15, 2017.

EXHIBIT D

WAGE AND HOURS PROVISIONS; PREVAILING WAGE DETERMINATION

Contractor shall comply with Article 8 of the Labor Law or a building service Contract covered by Article 9 thereof. Neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Employment Regulation and as set forth in the prevailing wage and supplement schedules issued by the New York State Department of Labor. Updated PDF copies of the prevailing wage schedule for this Project may be accessed through the New York State Department of Labor's website: www.labor.state.ny.us utilizing the Project's assigned Prevailing Wage Case Number (PRC#), listed below. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the New York State Department of Labor in accordance with the Labor Law.

CONTRACTOR Project No.: 2019-02-2931

PRC No.:2020007738

Current Wage Rate Schedule: <https://applications.labor.ny.gov/wpp/>

EXHIBIT E

CONSTRUCTION ACTIVITIES COORDINATION WITH SCHOOL OPERATIONS

[To be inserted]