

**SECTION 00 1113**

**ADVERTISEMENT FOR BIDS**

Colgate University invites you to provide proposals for Site Construction associated with the proposed **Merrill House Parking Lot & Hamilton Street Driveway Realignment** project on our campus in Hamilton, New York. Colgate University is a non-profit organization, and this project is tax exempt.

Plans and Specifications will be available on Friday, December 20, 2024. Bidders will be invited to access digital copies of the bid documents at no cost.

Bid Proposals shall be submitted digitally via email by the following time:

CONTACT: Colgate University  
Office of Planning, Design, and Construction  
Attn: Katy Jacobs, Project Manager  
[kjacobs@colgate.edu](mailto:kjacobs@colgate.edu)  
315-228-6760

BIDS DUE: Friday, January 17, 2025

TIME: 10:00am  
Bids will be privately reviewed and contractors notified thereafter.

In order for bidders to become familiar with the project, a **mandatory Pre-Bid Meeting** will be held in person at the following place and time:

LOCATION: Colgate University  
Merrill House – Garden Level Conference Room  
2 Oak Drive, Hamilton, NY 13346

DATE: Thursday, January 9, 2025

TIME: 11:00am

At this meeting, the general scope of the project will be reviewed by the Owner and bidders' questions will be received regarding the work. This pre-bid meeting is a prerequisite for acceptance of your bid by the Owner. Any Bidders that cannot attend this meeting must notify Colgate University in advance of the pre-bid meeting and make alternative arrangements. Invited Bidders must arrange for individual appointments to inspect the project site at a date and time approved by Colgate University's Planning, Design, and Construction office. The Owner reserves the right to waive this requirement.

All contractor questions and requests for information must be submitted to the Owner and Engineer in writing no later than 12pm on Monday, January 13, 2025. Any

interpretations/clarifications will be issued in writing via a formal bid addendum distributed to all Invited Contractors, the last of which shall be issued no later than Tuesday, January 14, 2025

Proposals must be made in writing on the forms furnished. The successful bidder will be required to provide insurance, lien waivers, and certifications in accordance with the contract documents.

No bidder shall withdraw their proposal within forty-five (45) days after the actual date of the opening thereof.

Colgate University Planning, Design, and Construction  
Merrill House - Garden Level  
13 Oak Drive  
Hamilton, NY 13346

**END OF SECTION 00 1113**

**SECTION 00 2100**

**INSTRUCTIONS FOR PROCUREMENT**

**1.01 PROJECT DEFINITION OF OWNER**

- A. Owner: Colgate University is the Owner of the project site to be improved upon. For the purposes of this project, the Colgate University Office of Planning, Design, and Construction department will act as the Owner's Representative.

**1.02 COMMENCEMENT AND COMPLETION**

- A. Upon execution and delivery of the Contract, and the delivery of the required submittals by the Contractor to the Owner and the approval thereof by the Owner's attorney, the Contractor will be notified to proceed with the work of the Contract. Such notification will be in the form of the delivery of an executed Notice to Proceed to the Contractor.
- B. The Notice to Proceed will only be issued when the Contract is fully executed and the following submittals are received and approved by the Owner:
  - a. Workers Compensation and Commercial General Liability Insurance (Section 00 7316)
  - b. Construction schedule (Section 01 3210)
  - c. Schedule of Values (Section 01 2900)
  - d. List of subcontractors
- C. Notification shall be presumed to have taken place one (1) day after the date of the Notice to Proceed, addressed to the Contractor at the address specified in their Bid. The work of the Contract shall commence within ten (10) days following such notification.
- D. The Contractor shall notify the Owner, in writing, of their intention to enter the project site at least five (5) days in advance of such entrance.
- E. All work of the Contract shall be completed within the time frame specified in these Contract Documents.

**1.03 EXISTING CONDITIONS AND SUBSURFACE CONDITIONS**

- A. It shall be the Contractor's obligation to evaluate the nature, character, quality and quantity of subsurface conditions likely to be encountered. Any reliance upon the subsurface information made available by the Owner or the Landscape Architect shall be at the Contractor's risk.
- B. Certain subsurface information may be shown on separate sheets or otherwise made available by the Owner or Landscape Architect to Bidders, Contractors, and other interested parties. Neither such information nor the documents on which it may be shown shall be considered a part of the Contract

Documents or Contract Drawings, it being understood that such information is made available only as a convenience, without express or implied representation, assurance, or guarantee that the information is adequate, complete, or correct, or that it represents a true picture of the subsurface conditions to be encountered, or that all pertinent subsurface information in the possession of the Owner or Landscape Architect has been furnished. The Contractor must interpret such information according to their own judgement.

- C. It shall be the obligation of the Contractor to inquire to the Owner and Landscape Architect whether pertinent subsurface information may be obtained by the Owner with respect to the work. The Contractor agrees that they shall not have nor assert against the Owner or Landscape Architect any claim for damages for extra work or otherwise or for relief from any obligation of their Contract based upon the failure by the Owner or Landscape Architect to obtain or to furnish additional drawings or information or to furnish all drawings and information in the Owner's or Landscape Architect's possession or based upon any inadequacy or inaccuracy of the drawings or information furnished, other than the Contract Documents.
- D. Any holder of Contract Documents will be permitted to inspect the site of the work and verify existing conditions and systems upon obtaining approval from the Owner. Test borings, test pits, etc. on the project site, if so desired, is subject to first obtaining written approval from the Owner (if the Owner is willing to allow) and any necessary permits from applicable agencies. It is understood that the party or parties receiving such approval must assume all risks and liabilities contingent thereto and shall restore the area to the satisfaction of the Owner.
- E. In the event existing conditions are found to be materially different from those represented in the Contract Documents, the Contractor shall immediately notify the Owner and Engineer in writing.

#### **1.04 CONTRACT DRAWINGS FURNISHED TO BIDDERS**

- A. A list of drawings is given in the Project Manual Index, whether bound herein or bound separately.
- B. During the period between Invitation for Bids and Opening of Bids, each prospective Bidder will be furnished with the Contract Documents. The Bidders are cautioned against scaling distances from printed drawings, except through the use of graphic scales shown thereon.
- C. The awarded Site Contractor will be furnished, free of charge, two (2) sets of full size Contract Drawings upon request.

**END OF SECTION 00 2100**

**SECTION 004113**

**BID FORM – STIPULATED SUM**

**COLGATE UNIVERSITY**  
**Merrill House Parking Lot & Hamilton Street Driveway Realignment**

Failure to prepare, complete and submit this Bid Form in accordance with the information requested thereon will disqualify the Bidder. THE OWNER RESERVES THE RIGHT TO WAIVE ANY INFORMALITIES AND TO REJECT ANY AND/OR ALL BIDS.

The Undersigned:

Bidder:

Address:

City/State:

Telephone:

Email:

hereby certifies that they have visited the site and have examined and fully comprehends the requirements and intent of the Bid Documents prepared by Landscape Architect dated December 18, 2024 and being familiar with all the conditions surrounding the construction of the project, including the availability of materials and labor, hereby proposes to furnish all labor, materials, supplies, equipment, and other facilities necessary or proper for or incidental to the performance of the proposed work and does hereby agree to perform all

**SITE CONSTRUCTION**

required by the project in accordance with the Bid Documents at the prices stated below. These prices are to cover all expenses incurred in the performance of Work scheduled under the Contract Documents, of which this proposal is a part.

The Bidder acknowledges receipt of the following Addenda to the plans and/or specifications:

Addendum Number _____	Date _____
Addendum Number _____	Date _____
Addendum Number _____	Date _____

**BASE BID:**

The bidder agrees to individually and independently furnish all materials, labor, equipment and all other costs for the Total Lump Sum Base Bid as follows.

For Materials and Supplies:

\_\_\_\_\_ DOLLARS \$ \_\_\_\_\_  
(Price in Words) (Price in Figures)

For all Labor and Costs (other than Materials and Supplies):

\_\_\_\_\_ DOLLARS \$ \_\_\_\_\_  
(Price in Words) (Price in Figures)

**TOTAL BASE BID:**

For all Labor and Materials

\_\_\_\_\_ DOLLARS \$ \_\_\_\_\_  
(Price in Words) (Price in Figures)

**ALTERNATE BIDS:**

Bidder shall state the amount to be added to the Base Bid to furnish all materials, labor, and other costs for the Alternates listed below. Refer to Specification Section 01 2300 – Alternates.

**ALTERNATE L-1: SODDED LAWN (Add)**

\_\_\_\_\_ DOLLARS \$ \_\_\_\_\_  
(Price in Words) (Price in Figures)

**SUBMITTED BY:**

Signature:

Name:

Title:

Date:

Bidding entity is (check one):

Individual ( )

Partnership ( )

Corporation ( )

**ATTACHMENT A**  
**Unit Prices**

Colgate University requests a detailed list of unit prices proposed by Bidders. Unit prices shall be stated as a price per unit of measurement (including all materials, labor, insurance, equipment, overhead, and profit) for work that may be added to or deducted from the Contract upon written notice by the Landscape Architect. Refer to Section 012200 – Unit Prices.

All work added shall be at the quoted unit prices, and work deleted shall be at the quoted unit prices less ten percent (10%). Change Orders shall be processed as outlined in Section 01 2600 – Contract Modification Procedures.

UNIT PRICE NUMBER/DESCRIPTION	UNIT PRICE/RATE	UNITS
No. 01 – Undercutting		Cubic Yard
No. 02 – Rock Excavation		Cubic Yard
No. 03 – Concrete Sidewalk		Square Foot
No. 04 – Medium Duty Asphalt		Square Yard
No. 05 – Light Duty Asphalt		Square Yard
No. 06 – Granite Curb		Linear Foot
No. 07 – Seeded Lawn		Square Yard
No. 08 – Sodded Lawn		Square Yard
No. 09 – One Inch Conduit		Linear Foot
No. 09 – Two Inch Conduit		Linear Foot
No. 11 – Telecom Infrastructure at Light Pole		Each

**ATTACHMENT B**  
**Conflict of Interest Certification**

Colgate University requires full disclosure of any and all potential conflicts of interest that may exist between the Owner and Bidder. Failure to complete this document with the requested information will disqualify your bid. Colgate University, at its discretion, may also disqualify your response if any representation is deemed inaccurate or if it concludes that a potential conflict of interest may be present.

Please complete one of the following, as applicable:

\_\_\_\_\_ The Bidder certifies that none of its directors, officers or employees, or their spouses or close family members are employed by or affiliated with Colgate University.

Or;

\_\_\_\_\_ The Bidder certifies that, except for the persons whose names are listed below (or on file with the University's Purchasing Department), none of its directors, officers, or employees, or their spouses or close family members, are employed by or affiliated with Colgate University except (list names and relationships):

Person (s): \_\_\_\_\_ Relationship: \_\_\_\_\_

Person (s): \_\_\_\_\_ Relationship: \_\_\_\_\_

The Contractor further certifies that during the past year, they have not paid or given any gift or other consideration having a value over \$25.00 or more to any employee, officer, or trustee of Colgate University.

We, (I), certify that the foregoing information is true, correct, and complete.

Company Name \_\_\_\_\_

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

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



**ATTACHMENT C**  
**Non Collusive Bid Certification**

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

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

Company Name \_\_\_\_\_

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

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT D**  
**Contractor's Certification Regarding**  
**Debarment, Suspension, and Responsibility**

The undersigned certifies, to the best of their knowledge and belief, that the Contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
2. Have not within a three-year period preceding this proposal/contract/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offenses in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three-year period preceding this proposal/contract/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
5. Where the Bidder is unable to certify to any of the statements of this certification, they shall attach an explanation to their bid submission.

Company Name\_\_\_\_\_

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

Print Name\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_

**ATTACHMENT E**  
**Resolution Accompanying Bid**  
**(Corporate Bidders Only)**

To: Colgate University  
(Owner)

I HEREBY CERTIFY that the following is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of \_\_\_\_\_, a corporation, incorporated under the laws of the State of New York duly called and held on the \_\_\_\_\_ Day of \_\_\_\_\_, 2025, a quorum then being present; that the said resolutions have been entered upon the regular minute book of the corporation and are in accordance with the certificate of incorporation and the bylaws and are now in full force and effect:

RESOLVE that the below listed officer(s) of this corporation is/are authorized on behalf of this corporation to sign the bid proposal and the contract for the following project:

**MERRILL HOUSE PARKING LOT & HAMILTON STREET DRIVEWAY REALIGNMENT**

And to include in such bid proposal the certificate as to non-collusion required by law as the act and deed of such corporation, and for all inaccuracies or misstatements in such certificate, this corporation shall be liable under the penalty of perjury; and to enter into the contract if awarded to this corporation.

NAME	TITLE
_____	_____
_____	_____
_____	_____

Secretary: \_\_\_\_\_

Date: \_\_\_\_\_

*(Corporate Seal if any.  
If no seal, write "NO SEAL"  
across this place and sign.)*

# DRAFT AIA® Document A101™ – 2017

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

AGREEMENT made as of the [ ] day of [ ] in the year 2025 »  
(In words, indicate day, month and year.)

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

Colgate University  
13 Oak Drive  
Hamilton, NY 13346

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

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

Merrill House Parking Lot & Hamilton Street Driveway Realignment  
88 Hamilton Street & 2 Oak Drive  
Hamilton, NY 13346

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

Appel Osborne Landscape Architecture  
102 West Division Street, Suite 100  
Syracuse, NY 13204

The Owner and Contractor agree as follows.

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

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

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



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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), the Contract Bid Documents, Drawings, Specifications, Addenda issued prior to execution of this Agreement, 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. In interpreting the Contract Documents, the Agreement and the General Conditions shall take priority over any supplemental or other conditions, drawings, specifications and other Contract Documents, unless expressly stated to the contrary in those other documents.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents for all construction of [Project Location and Title], including architectural, mechanical, electrical and site work made necessary by the construction activity. The work to be done under the contract and in accordance with the Contract Documents consists of performing, installing, furnishing, and supplying all equipment, labor and incidentals necessary, as well as all duties and obligations imposed upon the Contractor, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

« The Work to be performed under this Agreement shall commence at the instruction of the Owner either immediately upon receipt of the fully executed Contract or based upon the issuance of an Owner-issued notice to proceed. »

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

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work. The Contractor acknowledges that time is of the essence for this Project.

**§ 3.3 Substantial Completion**

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

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

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

[  ] By the following date:  August 15, 2025

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

Portion of Work	Substantial Completion Date
Tree Plantings (Schedule Extension)	November 1, 2025

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

§ 3.4 Scheduled Completion Dates. Within ( 7 ) days of the date of the award of this Contract, the Contractor shall submit for the review of the Owner and the Architect a schedule (“Completion Date Schedule”) that sets forth the rate of progress and practical order of the Work, including the scope of Work defining each such portion and also including the dates for starting and completing each portion of the Work, (each such completion date is a “Scheduled Completion Date”). Subject to delays and extensions of time as set forth in §8.3 of the General Conditions, Contractor shall complete each portion of the Work by the applicable Scheduled Completion Date, as set forth on the Completion Date Schedule.

§ 3.5 Monthly Narrative Reports. In addition to all other reports required to be provided by the Contractor pursuant to the Construction Documents, the Contractor shall provide to the Owner and the Architect monthly narrative reports which shall include (i) a description of the current and anticipated problem areas, delaying factors, and their impact, (ii) an explanation of corrective action taken or proposed, and (iii) if the Project is not in compliance with the dates provided in the Completion Date Schedule, an explanation of what measures will be taken in the next thirty (30) days to put the Work back on schedule and in compliance with the Completion Date Schedule.

§ 3.6 The Contractor shall achieve final completion of the entire work no later than August 13, 2021 This shall include all punch list work and demobilization off-site.

**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  (\$  ), subject to additions and deductions as provided in the Contract Documents. The Contract Sum includes all expenses necessary to complete the Work and has taken into account all foreseeable factors, including but not limited to increased prices and delay.

**§ 4.2 Alternates**

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

Item	Price
Base Bid:	\$
Alternate #1:	\$
<b>TOTAL CONTRACT SUM:</b>	\$

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

Item	Price	Conditions for Acceptance

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

Item	Price
NOT APPLICABLE	INCLUDE ALLOWANCES IF REQUIRED

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

Item	Units and Limitations	Price per Unit (\$0.00)
No. 01 – Undercutting	Cubic Yard	
No. 02 – Rock Excavation	Cubic Yard	
No. 03 – Concrete Sidewalk	Square Foot	
No. 04 – Medium Duty Asphalt	Square Yard	
No. 05 – Light Duty Asphalt	Square Yard	
No. 06 – Granite Curb	Linear Foot	
No. 07 – Seeded Lawn	Square Yard	
No. 08 – Sodded Lawn	Square Yard	
No. 09 – One Inch Conduit	Linear Foot	
No. 10 – Two Inch Conduit	Linear Foot	
No. 11 – Telecom Infrastructure at Light Pole	Each	

§ 4.5 Liquidated damages, if any: *(Insert terms and conditions for liquidated damages, if any.)*

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

« NOT APPLICABLE. »

**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.

« »

§ 5.1.3 The Owner shall make payment of the amount certified to the Contractor within thirty (30) days after the Application for Payment is received by the Architect and approved by the Owner.  
(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 of values 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 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

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

« Five Percent (5%) Retainage.»

§ 5.1.7.1.1 The following items are not subject to retainage:

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

« NOT APPLICABLE. »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

« NOT APPLICABLE. »



§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

« NOT APPLICABLE. »

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

## § 5.2 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 Article 12 of AIA Document A201–2017, 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: « Complete submission and acceptance by the Architect and Owner of all Project close-out documentation – O & M Manuals, As-Built Drawings, warranties and all other close-out documents, including but not limited to final waivers of lien and claim received by the Owner prior to the release of payment.

## § 5.3 Interest

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.)*

« » % «NOT APPLICABLE. »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

« »  
« »  
« »  
« »

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[  ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[  ] Litigation in a court of competent jurisdiction located in Madison County, New York.

[ « » ] Other (Specify)

« »

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

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

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:  
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

« Section 14.4.3 of AIA A-201 – 2017. »

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

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents or as may have been amended by mutual agreement of the parties hereto.

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

Colgate University – Office of Planning, Design, & Construction  
13 Oak Drive  
Hamilton, NY 13346  
315-228-6760  
kjacobs@colgate.edu

Appel Osborne Landscape Architecture  
102 West Division Street, Suite 100  
Syracuse, NY 13204  
315-476-1022  
vpietrzak@appelosborne.com

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

« »  
« »  
« »  
« »  
« »  
« »

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

§ 8.4.1 The key members of the Contractor’s staff shall be persons agreed upon with the Owner and identified as “Key Personnel” submitted in advance in writing by the Contractor to the Owner for the Owner’s written approval.

No Key Personnel member shall be changed without the written consent of the Owner, unless such person becomes unable to perform his or her duties due to death, disability or termination of employment, or unless the Owner requests removal. If a Key Personnel member becomes unable to perform his or her duties due to death, disability or termination of employment, or is removed by the Owner, the Contractor shall promptly replace such person with another qualified and licensed (where required) individual approved in writing by the Owner.

§ 8.4.2 The Contractor shall provide the Owner with a resume or other documentation regarding the experience of Key Personnel upon request.

### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

<< >>

### § 8.7 Other provisions:

§ 8.7.1 For change order work performed by a Subcontractor pursuant to a Change Order issued under this clause, each Subcontractor shall be paid (i) one hundred percent (100%) of its actual work costs (labor and materials) as allowed under Cost of the Work, plus (ii) no more than ten percent (10%) of the total of its work costs specified in (i) above as its overhead and profit. In the event tiered subcontractor work is required, in no instance shall the combined tiered subcontractor and subcontractor markup exceed fifteen percent (15%) of the actual work costs. §

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 **Exhibit A:** Section 007316 Insurance Requirements for Contractors
- .3 **Exhibit B:** Section 006116 Contractor Lien Waiver Forms
- .4 **Exhibit C:** Section 00 7213 AIA Document A201™ -2017, General Conditions of the Contract
- .5 **Drawings**

Number	Title	Date
L000	Cover Sheet	December 18, 2024
L001	Survey	
L100	SWPPP Plan	
L101	SWPPP Notes	
L102	Site Preparation Plan	
L103	Grading Plan	
L104	Utility Plan	
L105	Layout Plan	
L106	Planting Plan	
L107	Lighting Plan	

**.6 Specifications**

Section	Title	Date	Pages
Division 00, 01, & Technical Specifications	Merrill House Parking Lot & Hamilton Street Driveway Realignment	December 18, 2024	

**.7 Addenda, if any:**

Number	Date	Pages

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

**.8 Other Exhibits:**

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

[  ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

[  ] The Sustainability Plan:

Title	Date	Pages
NOT APPLICABLE		

[  ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
NOT APPLICABLE.			

**.9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

« Contractor’s Bid Proposal Dated: \_\_\_\_\_

Colgate University Form Contractor Lien Waiver Forms

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

**COLGATE UNIVERSITY**

OWNER (Signature)

CONTRACTOR (Signature)

« »« »

(Printed name and title)

« »« »

(Printed name and title)



**SECTION 00 6116****FINAL RELEASE AND WAIVER OF LIENS AND CLAIMS  
(EXHIBIT B)**

Certificate and Affidavit made this \_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_, a contractor to Colgate University under a contract dated the \_\_\_\_ day of \_\_\_\_\_, 2025, with respect to work on a Project known as Merrill House Parking Lot & Hamilton Street Driveway Realignment.

**KNOW ALL PERSONS BY THESE PRESENT:**

1. The undersigned hereby certifies that there is due and payable under the above-referenced contract and duly approved change orders thereto and modifications thereof the undisputed balance of \$\_\_\_\_\_ and agrees that this is the last payment due.
2. The undersigned further certifies that all work required under this contract, including all work required under change orders thereto, has been performed in accordance with the terms thereof, and that there are no claims of laborers or mechanics for unpaid wages arising out of the performance of this contract and the wages paid by the contractor and all of its subcontractors were in conformity with the contract in all respects, including but not limited to provisions relating to said wages.
3. Except for the amount stated in paragraph 1 hereof, the undersigned has received from Colgate University all sums of money payable to the undersigned under or pursuant to the aforementioned contract, including any changes or modifications thereof.
4. That in consideration of the payment of the amount stated in paragraph 1 hereof, the undersigned does hereby release Colgate University from any and all claims arising under or by reason of this contract and does for itself and its successors and assigns hereby waive, release and relinquish any and all right of liens against and claims for said work performed or materials furnished, including all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against the said Project or improvements thereto and/or Colgate University it ever had, now has or which it or its successors or assigns, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents; provided, however, that if for any reason Colgate University does not pay in full the amount stated in paragraph 1 hereof, said deduction shall not affect the validity of this Release but the amount so deducted shall be released upon payment thereof.
5. That as additional consideration for this full and final payment, the undersigned agrees that should any subcontractor, material man, laborer or anyone performing any service by or through the undersigned file any lien or make any claim for any additional payment after the date hereof, the undersigned shall bond or otherwise discharge any liens so filed and shall indemnify and hold Colgate University harmless from any and all claims raised by any such person subsequent to the date hereof.

*Final Release and Waiver of Liens and Claims*

- 6. The undersigned hereby grants Colgate University the right to review and audit any and all books and records of the undersigned at any time for verification.
- 7. The undersigned hereby represents that it has properly applied all funds received for valid trust purposes before using funds for any other purposes. In addition, the undersigned represents that if the undersigned has collective bargaining agreements with any union, all fringe benefits that are required to be paid on the project have been paid.
- 8. This Release and Waiver may not be changed orally.

**IN WITNESS WHEREOF**, the undersigned has signed and sealed this Instrument the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

(company seal)

**By:** \_\_\_\_\_

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 2025, before me, the subscriber, came \_\_\_\_\_, to me known, who being by me duly sworn on oath, did depose and say that: they reside in \_\_\_\_\_; and that they are the \_\_\_\_\_ [title] of \_\_\_\_\_, the company described in and which executed the foregoing Final Release and Waiver of Liens and Claims and that they have signed their name thereto, and that they have read the foregoing Final Receipt and Waiver of Liens and Claims by them subscribed.

Under penalties and pains of perjury, affiant further states that the matters and things stated therein are, to the best of their knowledge and belief, true.

\_\_\_\_\_  
(Signature of Affiant)

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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

DRAFT

# AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

Merrill House Parking Lot & Hamilton Street Driveway Realignment  
88 Hamilton Street & 2 Oak Drive  
Hamilton, NY 13346

**THE OWNER:**

*(Name, legal status and address)*

Colgate University  
13 Oak Drive  
Hamilton, NY 13346

**THE ARCHITECT:**

*(Name, legal status and address)*

Appel Osborne Landscape Architecture  
102 West Division Street, Suite 100  
Syracuse, NY 13204

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

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

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

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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), the Contractor's Bid, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. In interpreting the Contract Documents, the Agreement and these General Conditions shall take priority over any supplementary or other conditions, drawings, specifications and other Contract Documents, unless expressly stated to the contrary to those other documents.

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

**§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

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

**§ 1.5.3** Nothing in this Section 1.5 shall be construed to alter the rights of the Owner to the drawings, specifications or other documents prepared by the Architect and the Architect's consultants as set forth in this Agreement between the Owner and the Architect.

**§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to

whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

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### § 1.7 Digital Data Use and Transmission

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

### § 1.8 Building Information Models Use and Reliance

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

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the 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, any subcontractor or materialman 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 Evidence of the Owner's Financial Arrangements

§ 2.2.1 [INTENTIONALLY OMITTED].

§ 2.2.2 [INTENTIONALLY OMITTED].

§ 2.2.3 [INTENTIONALLY OMITTED].

§ 2.2.4 [INTENTIONALLY OMITTED].

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

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

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

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

**§ 2.3.4** The Owner shall furnish any and all information maintained by the Owner 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.

**§ 2.3.5** 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. The furnishing of such information shall not alter the Contractor's obligation under the construction documents and as specifically set forth in Section 3.2 hereof.

**§ 2.3.6** The Contractor shall provide the Owner with one copy of the Contract Documents.

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Architect, by notification to the Contractor, may stop all or any specified portion(s) of the Work for up to twenty-four (24) hours. Thereafter, if the Architect believes the stoppage should continue, the Architect shall so advise the Owner. The Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a period of four (4) business days after receipt of notice from the Owner or the Architect to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Owner shall be entitled to recover its costs in correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. In such a case, the Owner shall issue an appropriate Change Order deducting from payments then or thereafter due to the Contractor the reasonable cost of correcting such deficiencies. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner on demand. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

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

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

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

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

**§ 3.2.1** 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 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Execution of the Contract by the Contractor is a representation that the Contract Documents enable the Contractor to: (1) determine the Cost of the Work; (2) construct the Work outlined therein; and (3) otherwise fulfill all of its obligations hereunder, including but not limited to, Contractor's obligation to construct the Work for the Contract Sum on or before each of the Scheduled Completion Dates and the date for Substantial Completion. The Contractor further acknowledges and declares that it has had and is fully familiar with all of the conditions existing at the Project affecting each of the foregoing representations.

**§ 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 Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner and Architect may require.

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

### **§ 3.3 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 and shall complete the Work in a good and workmanlike manner in accordance with the Contract Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

**§ 3.3.4** If any of the Work is required to be inspected or approved by any public authority, or if any inspection of the Work is required by the Contract Documents, the Contractor shall cause such inspection

or approval to be performed. No inspection performed or failed to be performed hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

**§ 3.3.5** The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work and the Contractor shall use the Contractor's best efforts to maintain labor peace for the duration of the project.

### **§ 3.4 Labor and Materials**

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

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The Contract Sum shall be decreased by the difference in cost occasioned by a substitution and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for any substitution requested by the Contractor.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees, subcontractors and their agents and employees, and other persons performing Work under the Contract for the Contractor, and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not employ or continue to employ or subcontract with any person or entity to which the Owner shall at any time reasonably object.

### **§ 3.5 Warranty**

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

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall be responsible for providing all necessary warranty documentation to the Owner.

### **§ 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. The Contractor shall also procure all certificates of inspection, use, occupancy, other permits and licenses pursuant to the Work of the Contract, pay all charges and fees and give all notices necessary and incidental to the due and lawful

prosecution of the Work. Certificates of inspection, use and occupancy shall be delivered to the Owner upon completion of the Work in sufficient time for occupancy of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Guaranteed Maximum Price or Lump Sum as may be applicable.

**§ 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 seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. Contractor's failure to notify Owner and Architect within said fourteen (14) day period shall be deemed to be a waiver of any objection to a concealed or unknown condition and no increase in cost shall be required.

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

#### **§ 3.8 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.



**§ 3.9 Superintendent**

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

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

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

**§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information and the Owner's approval a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, but in no event less than bi-weekly.

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

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

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

The Contractor shall make available, at the Project site, for the use of the Owner and the Architect, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction in sufficient detail to enable the Architect to prepare reproducible record drawings of the Project as built, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. The Contractor shall also maintain onsite all available catalog data, price lists, manufacturers' operating and maintenance instructions, schematics, certificates, warranties and guarantees. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect 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 and other trade disciplines as may be required. The accuracy of all such information shall be the sole responsibility of the Contractor.

§ 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 in writing 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has 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 notice, the Architect's approval of a resubmission shall not apply to such revisions.

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, licensed in the State of New York, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings,

and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** After delivery of any materials, the Architect may make such tests as it deems necessary with samples required for such testing being furnished by and at the cost of the Contractor. The Architect may reject any materials that fail to comply with specifications set forth in the Construction Documents.

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

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall assure free, convenient, unencumbered and direct access to properties neighboring the Project site for the owners of such properties and their respective tenants, agents, invitees and guests.

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Except as may be expressly specified to the contrary in the Contract elsewhere, the Contractor shall clean all glass windows and surfaces so that they are dust-free upon the completion of the Work and shall leave the site "broom clean" or its equivalent.

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

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend with qualified and competent counsel suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where

the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner and Architect.

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall defend with qualified and competent counsel and indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them (each an "Indemnified Party") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and disbursements, arising out of or resulting from (i) Contractor's performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death (including any liability, claim, damage, loss or expense incurred under any workers' compensation law or regulation), 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 or other culpable conduct of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder; (ii) any claims asserted against an Indemnified Party pursuant to a provision of the New York Labor Law; and (iii) any claim against an Indemnified Party alleging vicarious or strict liability, provided the Contractor shall not be liable to the Indemnified Party for such party's own negligence. The Contractor shall also indemnify and hold harmless the Owner against any and all claims for mechanics' liens by subcontractors, sub-subcontractors or material suppliers and against any security interests by suppliers of goods and materials. 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.

**§ 3.18.3** The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and the agents and employees of either of them arising out of their negligent acts or omissions or other culpable conduct.

**§ 3.19** Training and Instructions: Upon Final Completion of the Work, the Contractor shall orient and instruct personnel of the Owner designated by the Owner in the operation and maintenance of all equipment furnished by the Contractor and shall turn over all pertinent literature and operational manuals relating to the equipment.

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents may be restricted, modified, or extended by Owner and Architect, after notice to the Contractor, unless Contractor raises a reasonable and timely objection to such change.

### § 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.

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**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 Communications**

The Owner and Contractor shall communicate with each other directly or through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner.

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

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and 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 or any other provision of the Construction Documents. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

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

§ 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.

§ 4.2.15 Notwithstanding the foregoing provisions, the Agreement Between the Owner and Architect shall be determined solely in accordance with the Architect's Agreement entered into with the Owner.

## 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 the subcontractors of a Separate Contractor.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Nothing in this section shall limit the rights of the Owner under Section 3.4.3 of the Agreement.

§ 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

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### **§ 5.3 Subcontractual Relations**

**§5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner 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.

**§ 5.3.2** The Contractor shall not enter into any subcontract, contract, agreement, purchase order or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or work with any party or entity if such party or entity is an affiliated entity (as defined below), unless approved in writing by the Owner after full disclosure. The term "affiliated entity" means any entity related to or affiliated with the Contractor or with respect to which the Contractor has a direct or indirect ownership or control, including, without limitation, any entity owned in whole or in part by the Contractor, any holder of more than 10% of the issued and outstanding shares of, or the holder of any interest in, the Contractor, 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 as a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

**§ 5.4.2** [INTENTIONALLY OMITTED].

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

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS****§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The Owner will perform Work related to the Project with the Owner's own forces and will award contracts in connection with the Project which are not part of the Contractor's responsibilities under this Agreement. The Contractor will be responsible for the coordination and integration of work to be performed by the Owner's forces and separate contractors within the Contractor's schedule. The Contractor shall manage its work to ensure that it is not interrupted or delayed on account of the awarding of other work on the Project to other contractors.

**§ 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 cooperate with the Contractor 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 make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

**§ 6.2 Mutual Responsibility**

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

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

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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



**§ 6.3 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 allocate those costs to the Contractor who shall be solely responsible for said costs.

**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. Changes in the Work may be initiated by the Contractor's issuance of (and the Owner's and the Architect's written approval of) a written Change Order Proposal which describes the change in the Work and the estimated cost of the change. Upon written approval by the Owner and the Architect of a Change Order Proposal, the Contractor may proceed with such changed Work pending the issuance of a formal Change Order document.

**§ 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. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, the Contractor, and the 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 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the 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 7.3.4 shall be limited to the following:

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

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

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

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect, along with all amounts and percentage mark-up costs confirmed by the Architect to cover and include all additional costs associated with the deleted item of Work. 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 Construction Manager will prepare a Change Order for the Owner's review, consideration and approval. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect within five (5) days and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

**ARTICLE 8 TIME****§ 8.1 Definitions**

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

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

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

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

**§ 8.1.5** The date of final completion of the Work shall be the date on which the Contractor has finally completed satisfactorily all the Work required of the Contractor under and in accordance with the Contract Documents, including all close-out documents identified in Section 9.10.2.1.

**§ 8.2 Progress and Completion**

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

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

**§ 8.2.3** The Contractor shall employ and supply a sufficient force of workers, material and equipment and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated in the completion date schedule to achieve each scheduled completion date and Substantial Completion within the Contract Time.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** Except as otherwise expressly provided in the Contract Documents, the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire; or (4) unavoidable casualties documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; by delay authorized by the Owner, or by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended 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. A copy of any claim for extension of Contract time shall be delivered to the Owner and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay on the Owner.

**§ 8.3.3** The Contractor’s remedy for Owner-caused delay shall be an extension of time to perform under the Contract and shall also include the reimbursement of costs and expenses to the Construction Manager caused by such Owner-caused delays, including extended overhead and general conditions costs, provided, however, that these damages shall expressly not include loss of opportunity costs, home office overhead, lost profits or any other consequential damages whatsoever.

**ARTICLE 9 PAYMENTS AND COMPLETION****§ 9.1 Contract Sum**

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

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

## § 9.2 Schedule of Values

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

## § 9.3 Applications for Payment

**§ 9.3.1** At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Owner and the Architect, consistent with AIA G702 and G703, an itemized Application for Payment prepared in accordance with the approved schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and 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, provided that these are included in fully executed Change Orders timely issued by the Architect and signed by all parties, which shall include all undisputed amounts to be paid.

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

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. The Contractor further warrants that, except as the Contractor specifically notifies the Owner in writing, no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor on such other person.

## § 9.4 Certificates for Payment

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Owner shall not be bound by the Architect's Certificate for Payment. The Owner may make its own

investigation of the progress of the Contractor's Work and shall be obligated to pay only for Work actually completed by the Contractor in accordance with the Contract Documents.

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

### **§ 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 suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, 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 suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.4.1** The Contractor shall take prompt action with respect to any lien filed or claim made by any of its suppliers, materialmen, subcontractors, sub-subcontractors, or others to whom it is obligated so that any such liens or claims will be removed of record as against the Owner or the Owner's property within sixty (60) days after they are filed or made. To the extent such liens and claims are caused by the acts or omissions of the Contractor, the Contractor shall be solely responsible for the removal and payment of all such liens and claims, and the Owner shall have no liability with respect to them. If the Contractor does not promptly remove any such lien or claim as required by this Section, the Owner may withhold as a security a sum equal to one and one-half (1.5) times the amount of the lien or claim from payments otherwise due to the Contractor, until the lien or claim is removed or paid. As is further set forth in Section 3.18.1 of this Agreement, the Contractor must indemnify the Owner in this regard.

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

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

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

## **§ 9.7 Failure of Payment**

If the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents for resolution of disputes of the amount accordingly due, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

**§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof, which the Owner has agreed to accept separately, that 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. Additionally, the Contractor shall provide the Architect all Record Drawings, as hereinafter defined, catalog data, manufacturers' operating and maintenance instructions, manufacturers' specifications, schematics, certificates, warranties, guarantees, catalogue, and price list for all equipment installed as part of the Work, and other related documents required by the Construction Documents. Record Drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to the field conditions, changes resulting from Contract Change Orders, and all concealed and buried installations of piping, conduit, and utility services changed as part of the Work. The Record Drawings shall be clean and all changes, corrections and dimensions shall be given in a legible manner in a contrasting color. All Record Drawings shall be provided in .pdf and Auto CAD format.

**§ 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

**§ 9.9 Partial Occupancy or Use**

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

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used 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 notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment and provided that all material required pursuant to Section 9.8.2 has been delivered to the Architect, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Owner shall not be bound by the Architect's final Certification for Payment. The Owner may make its own investigation of the progress of the Contractor's Work and shall be obligated to pay for only the Work actually completed by the Contractor in accordance with the Contract Documents.

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

**§ 9.10.2.1** Final completion of the Work shall be further conditioned upon satisfaction of the following minimum criteria:

1. all Work shown and described in the Contract Documents is complete, including all punch list items; Record as-built drawings and documentation has been submitted and approved by the Architect and the Owner;
2. operations and maintenance manuals for all products and equipment, as required, have been submitted and approved by the Architect and the Owner;
3. equipment or product testing required by the Contract Documents or by regulatory agencies have been completed, submitted and approved (and recorded in O&M Manuals);
4. all required Owner training has been completed and documented;
5. all regulatory agency certifications have been submitted or received by the Owner;
6. all areas have been cleaned pursuant to the terms herein; and
7. all other documents required by the Owner pursuant to the Contract Documents.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for



that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

**§ 9.10.6** 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. The Contractor shall assign or arrange for the assignment to the Owner of all warranties covering equipment furnished by the Contractor.

## 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, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall protect adjoining private or municipal property and shall provide barricades and temporary fences and covered walkways required to protect the safety of passers-by as required by prudent construction practices, local building codes, ordinances or the Contract Documents.

**§ 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 whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the

extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** 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** The Contractor shall maintain Work, materials and apparatus free from injury or damage from rain, wind, storms, frost or heat. If adverse weather makes it impossible to continue operation safely in spite of weather precautions, the Contractor shall cease work and notify the Owner and the Architect of such cessation. The Contractor shall not permit open fires on the project site.

**§ 10.2.9** In addition to its other obligations pursuant to this Article 10, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs and the property of third parties ( including municipalities) resulting from the performance of the Work whether by it or by its subcontractors at any tier.

**§ 10.2.10** The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibilities for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of Work.

**§ 10.2.11 Injury or Damage to Person or Property**

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

**§ 10.3 Hazardous Materials and Substances**

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

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

appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

**§ 10.3.6** 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 reimburse 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.

The general liability insurance required of the Contractor under this Article shall be written on a commercial occurrence basis covering the Contractor and all the subcontractors, sub-subcontractors, and others for whom the Contractor is or may be responsible in form and amount satisfactory to the Owner and with an insurer licensed to do business in the State of New York, which is reasonably satisfactory to the Owner. It shall also include coverage for the so-called risks of product liability, completed operations, explosion, collapse, and underground, unless such coverage is expressly waived by the Owner in writing upon the written request of the Contractor. All liability insurance required by the Contract shall be maintained in force during the term of the Contract, and until the later of one year after the date of final completion or one year after the Contractor or any subcontractor performs any Work under the Contract. The Contractor is required to purchase and maintain its own insurance coverages and limits under the Contract, and in addition is solely responsible for the compliance of its subcontractors in meeting all of the insurance requirements in the Contract. Unless waived by Owner, all subcontractors will be required to provide the same coverage and limits as stated for the Contractor, and the Contractor shall promptly notify the Owner at any time it is aware that any subcontractor is not in compliance with these insurance requirements. Failure of the Contractor to procure or maintain any of the insurance coverages required herein shall not relieve the Contractor from any liability under the contract, nor shall failure of the Contractor to properly notify the Owner of non-compliance relieve the Contractor from any liability under the Contract; nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations or indemnification responsibilities of the Contractor as may be stated elsewhere in the Contract. This clause shall apply to the extent it is not inconsistent with the insurance requirements set forth in the Contract Documents.

**§ 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. If any of the insurance required by this Agreement includes deductibles or self-insured retentions, satisfaction of such deductibles or self-insured retentions shall be the sole responsibility of the Contractor. 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. The certificates shall identify and name the Owner and the Architect and the Architect's consultants as additional insureds with respect to the Contractor's commercial general liability insurance coverages and policies, and indicate that the coverage shall be primary and non-contributory over any insurance carried by the Owner. 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 thirty (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. As soon as practicable following a written request by the Owner, the Contractor shall furnish the Owner with certified copies of the Contractor's insurance policies. Failure by the Contractor to maintain the required insurance coverages shall be grounds for immediate termination of the Contract by the Owner. This right of immediate termination shall supplement and be in addition to the Owner's other rights under Sections 2.4 and 14.2.

**§ 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 insured for claims caused, in whole or in part, by the Contractor's negligent acts or omissions during the Contractor's completed operations. The policy shall provide primary and non-contributory coverage over any insurance carried by the Owner.

**§ 11.1.5 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by

the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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

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

## § 11.3 Waivers of Subrogation

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

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring

the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**  
[INTENTIONALLY OMITTED].

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

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

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

**§ 11.6 Performance and Payment Bonds**

**§ 11.6.1** 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 if stipulated in bidding requirements are specifically required in the Contract Documents on the date of the execution of the Contract.

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

**ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

**§ 12.1 Uncovering of Work**

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

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

**§ 12.2 Correction of Work**

**§ 12.2.1 Before Substantial Completion**

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

**§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within ten (10) days during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

**§ 12.3 Acceptance of Nonconforming Work**

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 and enforced under the laws of the State of New York and any disputes arising under this agreement shall be venued in Madison County, New York.

**§ 13.2 Successors and Assigns**

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

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents.

The Contractor shall execute all consents reasonably required to facilitate the assignment or as specifically provided elsewhere in the Contract Documents.

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

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

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

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

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

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

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

### § 13.5 Interest

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



**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT****§ 14.1 Termination by the Contractor**

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

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

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

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

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

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

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

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not

expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

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

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

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

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

#### § 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

##### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

##### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

##### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within fourteen (14) days after occurrence of the event giving rise to such Claim.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

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

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given.

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

#### § 15.1.7 Waiver of Claims for Consequential Damages

[INTENTIONALLY OMITTED].

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation.

**§ 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

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

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, proceed to litigation, if appropriate.

**§ 15.3.4** 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 Consent to Jurisdiction**

The parties hereto consent to the jurisdiction of the courts of the State of New York (state and federal) with respect to any adjudication of any matters arising under or in connection with any Construction Document. The New York Courts (state and federal) shall have sole jurisdiction of any controversies regarding any provision of a Construction Document; any action or other proceeding which involves such a controversy shall be brought in those courts in

Madison County, New York, in the Village of Hamilton, New York and not elsewhere. The parties hereto waive any and all objections to venue in those courts and hereby submit to the jurisdiction of those courts.

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**SECTION 00 7316**  
**INSURANCE REQUIREMENTS**  
**(EXHIBIT A)**

The insurance requirements shall be as set forth below:

1. Worker's Compensation insurance as required under the laws of the State of New York.
2. Commercial General Liability, including bodily injury and property damage insurance, which shall specifically include contractual liability arising out of the operations performed by the contractor referring to this project, completed operations, and products liability with limits as follows:
  - a. Bodily injury:
    - \$1,000,000 each person
    - \$1,000,000 each occurrence
    - \$2,000,000 aggregate
  - b. Broad form property damage liability, including coverage for X-C-U hazards with limits as follows:
    - \$1,000,000 each occurrence
    - \$2,000,000 aggregate
- OR -
- a. Combined Single Limits
  - \$1,000,000 each occurrence
  - \$2,000,000 aggregate
3. Automobile liability insurance covering owned, non-owned, and hired vehicles, with limits as follows:
  - a. Property damage and bodily injury:
    - \$1,000,000 combined single limit
4. Umbrella Liability with limits as follows:
  - Up to \$5,000,000 each occurrence

The Contractor, and Sub-Contractors not covered by the Contractor's insurance, shall obtain and agree to maintain at their expense all insurance required by the Contract, as well as that outlined above. All general and umbrella liability insurance policies shall name Colgate University as additionally insured and said coverage shall be primary with respect to the project to which these insurance requirements pertain. A Certificate of Insurance with evidence of additional insurance status, along with a copy of the Additional Insured Endorsement, shall be submitted to and approved by Colgate

University prior to the commencement of work. Thirty days (30) prior written notice of cancellation of or any changes in any policy shall be given to Colgate University.

**END OF SECTION 00 7316**

# **Environmental Health and Safety (EHS) Contractor Requirements Handbook**

**Revised January 2023**



# COLGATE UNIVERSITY

## Environmental Health and Safety Contractor Requirements

### Contact Information

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**After-hours / Emergencies:** Call Campus Safety at 911 (campus phone) or 315-228-7911

**Campus Safety:** 315-228-7333 or email to [cusafety@colgate.edu](mailto:cusafety@colgate.edu)

**Facilities (B&G):** 315-228-7130 After-hours: 315-228-7468

#### **Environmental Health and Safety (EHS)**

Mary Williams

[mwilliams@colgate.edu](mailto:mwilliams@colgate.edu)

Director of Environmental Health and Safety

Ho Science Center Room 133

P: 315-228-7994 M: 315-525-6598

#### **Fire Safety**

Gary Bridge

[gbridge@colgate.edu](mailto:gbridge@colgate.edu)

Fire Safety

Ho Science Center Room B11

P: 315-228-6531 M: 315-404-1542

Cindy Geertgens

[cgeertgens@colgate.edu](mailto:cgeertgens@colgate.edu)

Environmental Health and Safety Manager

Ho Science Center Room 123A

P: 315-228-6411 M: 607-343-6713

Victoria Jones

[vejones@colgate.edu](mailto:vejones@colgate.edu)

Environmental Health and Safety Specialist

Ho Science Center Room B07

P: 315-228-6099 M: 774-641-8216

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Environmental Health and Safety

13 Oak Drive Hamilton, New York 13346 315-228-7994 Fax 315-228-6020

# COLGATE UNIVERSITY

## Introduction and Responsibilities

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Projects on Colgate University properties must be designed and constructed while meeting the following objectives:

- Ensure compliance with all applicable regulatory and university policy requirements
- Ensure an appropriate understanding by all parties of environmental health and safety requirements and any risks associated with the project
- Reduce or eliminate hazards for construction personnel
- Reduce or eliminate hazards and impacts to the community and the environment

### Responsibilities

Colgate University Planning, Design, and Construction (PDC) and Facilities staff are responsible for managing projects and contracted personnel in compliance with this document.

Colgate University Environmental Health and Safety (EHS) staff provides guidance on projects, as needed, to help ensure regulatory compliance throughout the construction process. EHS should be consulted for coordination in areas including, but not limited to, the following:

- Colgate University policies and procedures as outlined in this document
- Evaluation and testing of existing building materials for potential hazardous materials
- Pre-construction abatement of hazardous materials, when needed
- Identification of special project-specific hazards and guidance on risk mitigation measures
- University requirements for laboratory equipment (including fume hoods, safety showers, and eyewashes)
- Fire and life safety systems plans review and acceptance / reacceptance inspection and testing is required in coordination with Emergency Management / Fire Safety staff

Requirements for contractors performing building, facilities, or equipment-related construction, repair, installation, renovation, or maintenance activities:

- Provide the Colgate University Project Manager with emergency contact phone number(s), usable 24 hours a day, for the contractor's representative.
- General Contractor shall register to receive university emergency notifications through Emergency Management.
- Bear sole responsibility for the health and safety of his or her employees.
- Provide required safety and health documentation to the Project Manager.
- The contractor is expected to take all steps necessary to protect the safety and health of Colgate University community members (including faculty, staff, students, and visitors) during the performance of their work by establishing, administering, and enforcing safety rules that meet federal, state, and local regulatory requirements.

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- Each contractor that coordinates the work of subcontractors shall ensure that they abide by the requirements outlined herein. The contractor bears sole responsibility for communication of safety-related information and requirements to their subcontractors.

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# COLGATE UNIVERSITY

## Requirements

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### General Requirements

#### Access, Barricades, and Signage

The contractor is solely responsible for security within the construction fence or site, and for all of its equipment, materials, vehicles, and work on or off site.

- The contractor shall establish controls to restrict unauthorized access to the work zone and ensure that requirements for entry are clearly posted at all access points. Signs should clearly indicate personal protective equipment (PPE) that must be worn in the restricted area.
- Where necessary, sufficient barricades, bollards, ropes, signs, guards, lanterns, etc. shall be provided by the contractor to adequately warn and exclude unauthorized persons from the unsafe area. Barricades around excavations shall be sufficiently rigid that a person cannot displace them by walking into them at a normal pace. At a minimum, the following areas must be barricaded:
  - Areas with temporarily wiring operating at >600 V
  - Work areas for electrical equipment with exposed, energized parts
  - The swing radius of the rotating superstructure of cranes
  - Temporary wall or floor openings
- The contractor shall abide by the requirements of any sign posted in a building that requires the use of specific personal protective equipment, that restricts access to qualified or authorized persons only, or that establishes other requirements for entry.

#### Accident Reporting

Any jobsite incident involving an occupational related injury, illness, or near miss must be reported to EHS. The contractor is responsible for conducting a thorough investigation of every occupational injury, illness, and near miss to determine root cause and actions to be taken to prevent recurrence. Copies of any incident report, interview, or any other related documentation must be made available to EHS staff. If it is determined that the incident may have been caused by the contractor's negligence, then punitive actions may result.

#### Excavations

An underground utility survey must be conducted prior to the start of any excavation. Project Managers and/or Facilities staff must communicate the location of all existing utilities as accurately as possible from existing surveys, drawings, and other data. Contractor shall exercise extraordinary care in excavation.

- A competent person must be clearly identified for all excavations. This person must be knowledgeable in assessing soil conditions, the use of protective systems, and OSHA requirements.
- Excavated material must be placed at least 2 feet from the edge of any excavation.
- Precautions must be taken to ensure vibrating equipment/vehicular traffic does not cause a cave-in.

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- No employee shall enter an excavation that contains standing or seeping water.
- Access (ladder/ramp) must be provided and located so no worker must travel more than 25 feet to exit.
- Employees at the edge of an excavation 6 feet or more in depth shall be provided with fall protection.
- If conditions change in or around the excavation, employees must exit the excavation and a competent person must re-inspect and give approval for employees to re-enter.
- For excavations greater than five feet in depth:
  - Sloping, benching, or other approved cave-in protection systems must be utilized.
  - Trench boxes/shoring must be a designed and approved system.
  - The trench box should extend at least 18 inches above the surrounding ground surface.
  - Excavations greater than 20 feet must be designed by an engineer.

## Fall Protection

Fall protection must be implemented by construction contractors when work is performed on elevated surfaces that are six feet or more above the surrounding area without adequate guard rail systems or within six feet of an unprotected floor opening, wall opening, suspended platform sloped roof, or roof edge (Note: general industry contractors must meet these same requirements performing work on elevated surface at four feet or more). The contractor must analyze the work site, the potential hazards, and the magnitude of possible injury to workers in assessing which type of fall protection system should be used. When using personal fall protection, the contractor worker must, at all times, be anchored off by at least one connection between his/her body harness and a secured anchor. The anchor or fall protection device must meet all OSHA and other applicable regulatory requirements. For scaffolding, fall protection is required for each worker on a scaffold more than ten feet above a lower level. Fall protection is required for all aerial lifts, regardless of work height, including scissor lifts.

## Hazardous Materials

- Accidental spills and/or releases of hazardous materials must be immediately reported to Campus Safety (see contact information above). Response and cleanup of material must be coordinated with EHS.
- Compressed gas cylinders must be properly labeled (clearly marked with contents and contractor's name), used (in a well-ventilated area, with approved fittings, valves closed when not in use, etc.), transported (secured to a hand truck or cart), and stored (fasted securely with a chain/strap or in a cage/ rack, away from flame, etc.). Contractors must notify EHS and Fire Safety of compressed gases that are brought on site.
- Explosives are not permitted.
- Flammable and combustible materials must be stored away from heat sources.
- Petroleum Bulk Storage (PBS) work must conform to New York State Department of Environmental Conservation (DEC) and Environmental Protection Agency (EPA)

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regulations for all installations and modifications. Contractors must coordinate with EHS to provide notification to the DEC in writing prior to any modification (closure, removal or installation) of a chemical tank in accordance with 6NYCRR Parts 596 and 598.

## **Ladders**

Contractors must train their employees in safe ladder use. Ladders must be selected and used in accordance with OSHA 20 CFR 1910.25-.27 and must be constructed of fiberglass, inspected for defects (cracked, broken, missing feet, etc.) prior to use, secured to prevent shifting or slipping, and taken down and stored at the end of each workday.

## **No Smoking Policy**

All indoor areas of the University are designated as no smoking areas by New York State Law, where no person shall smoke or carry a lighted cigar, cigarette, pipe, e-cigarette, or any other form of smoking object that is used to smoke tobacco. Further the university expands the definition of smoking to also include any and all other legal substances such as cloves or any illegal substances including, but not limited to, marijuana. Although all persons are strongly encouraged not to smoke at all on campus, exceptions to the above policy, where smoking technically is permitted includes areas outside of buildings. Individuals who choose to smoke outside should consider moving a reasonable distance from any building entrances.

## **Utilities Shutdown**

Interruption of utility services which will affect other campus facilities or functions must be coordinated a minimum of ten days in advance with the Colgate University Project Manager. This work may have to be performed during off hours (early morning, late night, or weekend) timeslots.

## **Vehicular Safety**

- Motor vehicles shall not idle longer than five minutes unless the vehicle is being serviced, is a delivery vehicle for which engine power is necessary for the delivery, or the vehicle is in operation for which associate power need is required.
- It should not be assumed that contractor parking will be adjacent to the project. Parking of construction personnel vehicles may be at a remote location up to one half-mile from the site. The university will not provide shuttle service. Parking of construction personnel vehicles on any other land or property may be subject to ticketing, fines, booting and/or towing at the vehicle owner's expense.
- Contractors and their employees are not permitted, under any circumstances, to shuttle workers around campus in the back / cargo area of a truck.
- Construction vehicles and equipment shall obey all posted speed limits and other traffic restrictions. Construction vehicles and equipment shall stop for all pedestrians. Pedestrians always have the right of way.
- Violators of these policies may be ticketed and towed at the owner's expense.

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## Emergency Management and Fire Safety

### Emergency Procedures

- Colgate University provides emergency notifications using the ColgateAlert system, which includes communications via cell phone text messaging / voicemail, campus network phones, e-mail, and outdoor high-powered speaker arrays. Blue light emergency telephones are also strategically located throughout campus. To sign up for Rave Alerts, contractors should inquire at Campus Safety.
- Fire extinguishers, basic first aid kits, automated external defibrillators (AEDs), and epinephrine auto-injection pens are available on campus for use by trained personnel.

### Fire Protection Equipment

- Fire alarm system and sprinkler system must be operable at all times. If shut-down of either system is required to complete the work, arrangements must be made with Emergency Management / Fire Safety and Campus Safety.
- Without prior knowledge and authorization from Emergency Management / Fire Safety, contractors are prohibited from:
  - Blocking access to an exit, egress, or exit discharge.
  - Wedging open fire or smoke doors.
  - Removing or modifying exit signage or emergency lighting.
  - Removing fire extinguishers, smoke detectors, or any other signaling device or any fire suppression equipment.
  - Compromising the fire rating of a partition, door, or other barrier

### Fire Safety

- Contractor's work must maintain safe and legal means of egress (at least two) at all times.
- Dust must be controlled by utilizing chutes and enclosed dumpsters when removing debris from the building. Water sprinklers and other methods shall be used as required to minimize dust. Contractors who are completing work that creates respirable crystalline silica dust will have a copy of their silica control plan available for review.
- Any proposed use of heaters or salamanders must be coordinated with Colgate University Fire Safety staff. Such devices must be securely fastened and guarded from traffic.
- Temporary Heat: If building systems are not available, provide temporary heat as needed to protect the work and create a suitable work environment. Provide temporary heat to protect the exterior construction against injury or damage resulting from cold temperature and dampness, to heat materials, and to maintain the minimum temperatures specified herein and in individual specification sections. Protect building from soot, smoke and fire damage. Do not use heaters which would interfere with curing of mortar and grout or damage any materials.

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- Heaters for temporary heat shall be approved temporary steam generators or forced warm air heaters located outside the building or vented to the outside, or other safety type UL approved heating devices acceptable to the Architect.
- Oil burning salamander type heaters will not be permitted. Non-vented, open flame heaters will not be permitted inside the building once the building is closed-in.
- Propane type-heaters will not be permitted within the area of the building or near stockpiles of combustible materials.
- Permanent building equipment shall not be used without written permission from the Colgate University Project Manager. If the equipment is used for temporary heating or cooling, it shall be adequately maintained per manufacturer's instructions and protected with filters, strainers, controls, reliefs, and similar items. Prior to turnover to Colgate University, the equipment shall be in a clean, like new condition. The guarantee period shall not start until the equipment is turned over to Colgate University. Do not invalidate existing warranty by any action or failure to act. Clean and change air filters frequently to prevent construction dust and debris from contaminating system.

## **Colgate University Program-Specific Requirements**

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Contact Environmental Health and Safety (EHS) staff or refer to [colgate.edu/EHS](http://colgate.edu/EHS) for current versions of all referenced policies and programs.

### **Asbestos and Potentially Asbestos Containing Materials, Lead-Based Paints, Polychlorinated Biphenyls (PCBs)**

Project Managers and contractors shall work with EHS in the planning stages of any projects that could potentially disturb any hazardous building materials (including asbestos, lead-based paints, and PCBs). Historical sampling results may not be available for all materials in all locations on campus, and due to the use of non-destructive sampling techniques, potentially hazardous materials may be discovered during demolition or renovation work. If suspect materials are discovered, work must stop immediately and testing (and abatement if needed) of such materials must be coordinated with EHS. Any changes to the scope of work must also be reviewed by EHS.

Contractors must be able to provide documentation upon request confirming that all materials installed and products or processes used do not contain regulated hazardous building materials, including, but not limited to: asbestos, lead-based paint, or polychlorinated biphenyls (PCBs).

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## **Asbestos**

Historical asbestos surveys have been conducted in accordance with 12 NYCRR Part 56. Asbestos containing materials (ACM) and potentially asbestos containing materials (PACM) shall not be removed, repaired, replaced, or disturbed by anyone other than those trained and certified to perform these tasks. Bulk quantities of these materials shall be removed and handled only by a New York State licensed, university-approved asbestos abatement contractor in accordance with all federal, state, and local regulations.

## **Lead**

Historical lead paint surveys have been conducted in accordance with 40 CFR 745 Lead Renovation, Repair, and Painting (RRP) regulations by EPA certified RRP renovators. Any work that will disturb existing lead-based paint (by sanding, sawing, grinding, scraping, etc.) must be coordinated with EHS staff.

Any contractor whose scope of work includes disturbing lead-based paint must provide copies of current EPA Lead Safe Certified Firm and Certified Renovator documents to EHS. All required records must be made available, including documentation of on-the-job safe work practices training for non-certified workers, cleaning verification, and any other reports required under the EPA RRP Rule. Lead-containing materials with concentrations above 5.0 mg/L (as determined by a TCLP test) must be disposed of as hazardous waste in coordination with EHS.

The Consumer Product Safety Commission (CPSC) considers paint containing less than 0.06% lead to be "lead free." OSHA does not, however, accept that categorization. For the purposes of this document, lead-free paint is considered paint with no lead content.

## **PCBs**

Historical PCB surveys have been conducted in accordance with 40 CFR 761 regulations. Any materials with regulated levels of PCBs (equal to or greater than 50 ppm) must be handled and disposed of as hazardous waste in coordination with EHS.

## **Confined Space Program**

A confined space, as defined in 29 CFR 1910.146, has limited or restricted means for entry or exit (ex. tanks, vessels, silos, vaults, pits, and storage bins) and is not designed for continuous occupancy. An inventory of all confined spaces at Colgate University has been compiled to provide information on potential hazards, personal protective equipment (PPE) requirements, and entry procedures for each identified space. A binder with this information is located in the EHS office, and EHS staff can provide access to the online inventory upon request.

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All confined space entry permits must be obtained directly from EHS (see Appendix A). Contractors are responsible for assigning an entry supervisor, entrant, and attendant and for bringing air monitors, PPE, and any other equipment needed for their work. Contractors must coordinate confined space entries with EHS, including signing out a radio for communication with university personnel and receiving a confined space entry permit. Confined space permits are valid for a maximum of 8 hours, at which point a new permit would need to be issued.

## **Electrical Safety and Lockout / Tagout**

Project managers/coordinators and contractors both have electrical safety and lockout/tagout responsibilities.

### **Colgate University Project Managers/Coordinators**

- Inform contractors of all known hazards that are covered by the Electrical Safety Program that relate to the contract employer's work, which might not be recognized by the contract employer or its employees
- Provide information specific to Colgate University that the contract employer needs in order to make the required assessments

### **Contractors**

- Ensure that each employee is instructed in the hazards communicated by Colgate University
- Ensure that each employee follows the work practices required by this Program and all applicable regulations
- Maintain all required documentation
- Not perform any work on energized electrical equipment without prior notification and approval from the Electrical Safety Team
- Supply a site-specific safety plan to the Colgate University project manager/coordinator when required by contract documents
- Advise Colgate University of any of the following:
  - Any unique hazards presented by or related to the contract employers work
  - Any hazards identified during the course of the work that were not communicated or identified by Colgate University prior to the work
  - The measures and corrective action(s) undertaken by the contract employer to correct any violations reported by Colgate University

### **Multi-Employer/Contractor Coordination**

Where Colgate University employees and contractors (or multiple contractors) are involved with a project, more than one party may be responsible for hazardous conditions or activities that violate safe work practices. Where multiple parties are involved such as a General Contractor with sub-contractors, Colgate University personnel shall notify the General Contractor that their responsibility extends to

# COLGATE UNIVERSITY

each party whereby the parties are informed of: potential hazards, existing hazards, safe work practices, personal protective equipment requirements, emergency procedures, emergency equipment, site requirements, and evacuation procedures (applicable for the location and the work being performed). This includes a documented job briefing signed by the appropriate representative personnel involved in the project.

## **Hazard Communication (Right-to-Know)**

Contracted employees who could be exposed to hazardous substances as a result of their work must be familiar with OSHA's Hazard Communication Standard and the Colgate University Hazard Communication Program and the necessary precautions to take while working on campus. The Project Manager will provide all necessary information to the contractor concerning the potential hazards of university-owned materials to which they may be exposed, and appropriate protective measures required to minimize exposure. Environmental Health and Safety maintains an online Safety Data Sheet (SDS) library and can provide access and/or copies of SDSs upon request.

In accordance with the Hazard Communication Standard, information on the hazards of chemical substances at the worksite must be readily accessible to employees. For materials brought onto Colgate University property, contractors must have a list of hazardous substances and associated Safety Data Sheets available for review by Colgate University personnel. This includes items such as sealants, caulks, oils, paints, paint thinners, fuel sources, adhesives, refinishing materials, etc.

If, at any time, unexpected hazardous materials are encountered, work must cease immediately and the Project Manager and EHS must be notified.

## **Hazardous, Non-Hazardous, and Universal Waste Management**

Contractors shall inform EHS of all hazardous waste disposals. Prior to beginning work, the contractor shall develop plans to ensure that all hazardous wastes are handled and disposed of in accordance with federal, state, and local regulations. When arranged in advance, some hazardous wastes will be managed and disposed of by EHS personnel. Contractors are solely responsible for the disposal of all non-hazardous and universal construction wastes.

## **Hot Work Program**

The Hot Work Program will be followed whenever work at any Colgate University owned or leased building or property involves welding, cutting, open torches and/or other hot work operations (See Appendix B).

### **Designated Hot Work Areas**

Designated Hot Work Areas are locations approved by the Program Administrator and Code Enforcement Officer as specifically designated for hot work. The following areas have been approved as Designated Hot Work Areas (note: indoor locations only include area that can be enclosed by the fire curtain):

# COLGATE UNIVERSITY

- Facilities Building mechanic's garage
- Heating Plant
- McGregor Hall machine shop
- Preventative Maintenance (PM) shop
- Plumbing shop
- Ryan Art Studio welding shop
- Schupf Studio garage
- Outdoor areas where there is no flammable or combustible material within 35 feet of the immediate hot work area

Fire watch requirements are not required for routine hot work operations in Designated Hot Work Areas provided the following conditions are met:

- Appreciable combustible material must not be located within 35 feet of the hot work area. Where relocation is not practicable, combustibles must be protected with flameproof covers or shielded.
- Work floors or surfaces must be of a noncombustible construction (concrete) or suitable noncombustible outdoor environment (soil / stone)
- Floor surfaces must be clean of dust, debris, etc.
- Flammable materials and containers formerly holding flammable materials must not be stored in the immediate work area
- Walls and partitions in the Designated Hot Work Area must be noncombustible construction. Any holes or openings through the partitions must be tightly covered, shielded, or guarded to prevent the passage of sparks or slag to adjacent areas. Fire curtains may be employed to meet this requirement.
- Mechanical local exhaust ventilation is provided during all hot work operations
- Properly maintained safety equipment including a fire blanket and appropriately sized /rated fire extinguishers must be at the Designated Hot Work Area
- Visible signage

## **Non-Designated Hot Work Area**

- A combination Hot Work in Progress Sign (front side) / Hot Work Permit (back side) must be obtained from Campus Safety by the individual conducting the hot work. Upon issue, the Campus Safety dispatcher will sign the Hot Work Permit and make a log entry and radio announcement with the hot work location.
- The Hot Work Permit shall be filled out in its entirety, with all applicable safety measures taken as listed, and signed by the hot work operator.
- The permit authorizing supervisor will conduct a Pre-Hot Work Check verifying that all safety precautions marked on the Hot Work Permit have been completed and sign the Hot Work Permit.
- The combination Hot Work Permit / Hot Work in Progress Sign will be posted in a conspicuous area to warn others before they enter the hot work area.
- As per the Hot Work Permit safety requirements, a fire watch will be posted during the hot work (including during any break activity) and shall continue for a minimum of 60 minutes after the conclusion of the work.

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- The hot work operator and fire watch shall both be trained in the use of portable fire extinguishers.
- A minimum of one portable fire extinguisher with a 2-A:20-B-C rating shall be readily accessible within 30 feet of the location where the hot work is being performed.
- Upon completion of the hot work, the Hot Work Permit will be returned to Campus Safety by the individual that conducted the hot work. Upon receipt, the Campus Safety dispatcher will make a log entry and radio announcement that hot work in that location has been completed.

**Note:** Hot Work Permits expire after 8 hours, at which point a new permit must be obtained (if needed)

## **Personal Protective Equipment (PPE)**

As outlined above, employees must understand the contractor's site-specific and job-specific PPE requirements and entry procedures prior to entering a construction site.

The minimum PPE requirements for work on a construction site are as follows:

- Hardhats (complying with the ANSI Z89.1 standard)
- High Visibility Clothing or Vest (when appropriate)
- Safety Footwear (as appropriate, including steel toed boots, slip-resistant footwear, etc.)
- Safety Glasses (complying with the ANSI Z87 standard)

## **Attachments:**

Appendix A: Sample Confined Space Entry Permit

(Note: All confined space entry permits must be obtained directly from EHS)

Appendix B: Sample Hot Work Permit

(Note: All hot work permits must be obtained directly from Campus Safety)

# COLGATE UNIVERSITY

## Certification

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Contractors shall agree to comply by the Colgate University Environmental Health and Safety Contractor Requirements.

*Certification shall be made only by the Owner, a Partner or a Corporate Officer, or other person duly authorized to sign binding agreements for the contractor. The certification shall be accompanied by a notarized letter of authorization from the contractor naming the person duly authorized to sign for the contractor.*

**I certify that I have read this document and accept all of its terms and conditions in order to work on properties owned, leased, or occupied by Colgate University.**

PROJECT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



# Colgate University

## Confined Space Entry Permit

Permit Number: \_\_\_\_\_  
Location: \_\_\_\_\_  
Confined Space Being Entered: \_\_\_\_\_  
Description: \_\_\_\_\_

Date: \_\_\_\_\_  
Permit Expiration Date/Time: \_\_\_\_\_  
Department/Company: \_\_\_\_\_

### Nature of Hazard in Confined Space:

*(Check all that apply)*

- Oxygen Deficiency (Less Than 19.5% at Sea Level)
- Flammable Gases or Vapors (>10% of LEL)
- Flammable Limit or >23.5% Oxygen at Sea Level
- Toxic Gases or Vapors > PEL
- Mechanical Hazards
- Skin Contact Hazard
- Engulfment
- Other: \_\_\_\_\_

### Pre-entry Preparation:

*(Check all that apply)*

- Notify Affected Departments of Service Interruption
- Isolate Blanked or Double Valve with Lock and Tag
- Energy Sources Neutralized (See Control of Hazardous Energy Program)
- Ventilation to Provide Fresh Air
- Notify Campus Safety of the Entry
- Employees Informed of Confined Space Hazards
- Operating and Rescue Procedures Reviewed and Available to Each Employee
- Atmospheric Test in Compliance
- Attach Hot Work Permit
- Rescue Equipment on Site
- Proper PPE on Site
- Other: \_\_\_\_\_

### Equipment Required for Entry and Work:

*(Check all that apply and list PPE used)*

- Protective Clothing Used: \_\_\_\_\_
- Hearing Protection Used: \_\_\_\_\_
- Other: \_\_\_\_\_

### Electrical Equipment/Tools:

- Low Voltage
- GFCIs
- Other: \_\_\_\_\_

**Respiratory Protection Used:** \_\_\_\_\_

**Communication Aid Used:** \_\_\_\_\_

**Rescue Equipment Available:** \_\_\_\_\_

**Authorized Entrants:** \_\_\_\_\_

**Authorized Attendants:** \_\_\_\_\_

**Problems Encountered:** \_\_\_\_\_

	Acceptable Limit	Time:	Time:	Time:	Time:	Time:	Time:	Time:
<b>Oxygen</b>	19.50% - 23.50%							
<b>Flammability</b>	10% LEL							
<b>H<sub>2</sub>S</b>	10 ppm							
<b>CO</b>	25 ppm							
Toxic: (list)								

\*Atmospheric testing and documentation shall be completed every 15 minutes. Additional sampling documentation sheets are available in Ho Science Center room 123.

**Name of employee conducting Atmospheric Monitoring:** \_\_\_\_\_

Entrant	Time In	Time Out	Time In	Time Out	Attendant

**Entry Supervisor Authorization:**

*I certify that all required precautions have been taken and necessary equipment is provided for safe entry and work in this confined space.*

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Reviewer Name (print) \_\_\_\_\_

Reviewer Signature: \_\_\_\_\_



# Colgate University Hot Work Permit

Seek an alternative/safer method if possible

*Before initiating hot work, ensure precautions are in place as required by NFPA 51B and IFC Chapter 35  
Make sure an appropriate fire extinguisher is readily available.*

*This Hot Work Permit is required for any operation involving open flame or producing heat and/or sparks. This work includes but is not limited to, welding, brazing, cutting, grinding, soldering, thawing pipe, torch-applied roofing, or chemical welding*

Date \_\_\_\_\_

Location/Building and floor \_\_\_\_\_

Name (print) and signature of Campus Safety Dispatcher issuing permit

Work to be done \_\_\_\_\_

*I verify that the above location has been examined, the precautions marked on the checklist below have been taken, and permission is granted for this work.*

Time Started \_\_\_\_\_ Time Completed \_\_\_\_\_

Name (print) and signature of permit-authorizing Supervisor

THIS PERMIT IS GOOD FOR ONE DAY (MAX)

Name (print) and signature of person doing hot work

- Available sprinklers, hose streams, and extinguishers are in service and operable.
- Hot work equipment is in good working condition in accordance with manufacturer's specifications.
- Special permissions obtained to conduct hot work on metal vessels or piping lined with rubber or plastic.

## Requirements within 35 ft (11m) of hot work

- Flammable liquid, dust, lint, and oily deposits removed.
- Explosive atmosphere in area eliminated.
- Floors swept clean and trash removed.
- Combustible floors wet down or covered with damp sand or fire-resistive/noncombustible materials or equivalent.
- Available sprinklers, hose streams, and extinguishers are in service and operable
- Personnel protected from electrical shock when floors are wet.
- Other combustible storage material removed or covered with listed or approved materials (welding pads, blankets, or curtains; fire-resistive tarpaulins), metal shields, or noncombustible materials.
- All wall and floor openings covered.
- Ducts and conveyers that might carry sparks to distant combustible material covered, protected, or shut down.

## Requirements for hot work on walls, ceilings, or roofs

- Construction is noncombustible and without combustible coverings or insulation.
- Combustible material on other side of walls, ceilings or roofs is moved away.

## Requirements for hot work on enclosed equipment

- Enclosed equipment is cleaned of all combustibles.
- Containers are purged of flammable liquid/vapor.
- Pressurized vessels, piping, and equipment removed from service, isolated, and vented.

## Requirements for hot work fire watch and fire monitoring

- Fire watch is provided during and for a minimum of 30 minutes after hot work, including any break activity.
- Fire watch is provided with suitable extinguishers and, where practical, a charged small hose.
- Fire watch is trained in use of equipment and in sounding alarm
- Fire watch can be required in adjoining areas, above and below.
- Yes  No Per the Permit-Authorizing Supervisor fire watch monitoring of hot work area has been extended beyond 60 min.

**CAUTION**

**HOT WORK IN PROGRESS**

**STAY CLEAR**

**SECTION 00 7353**  
**STORMWATER POLLUTION PREVENTION**

**1.01 MANDATORY CERTIFICATION**

- A. The SPDES General Permit for Stormwater Discharges from Construction Activities requires the Prime Contractor and subcontractors to certify they understand the Stormwater Pollution Prevention Plan (SWPPP), the General Permit conditions, and their responsibilities for compliance. The certification must be signed prior to performing any contract work. The certification shall be signed by an Owner, Principal, President, Secretary or Treasurer of the firm.

*"I hereby certify under penalty of law that I understand and agree to comply with the terms and conditions of the SWPPP and agree to implement any corrective actions identified by the qualified inspector during a site inspection. I also understand that the owner or operator must comply with the terms and conditions of the most current version of the New York State Pollutant Discharge Elimination System ("SPDES") general permit for stormwater discharges from construction activities and that it is unlawful for any person to cause or contribute to a violation of water quality standards. Furthermore, I am aware that there are significant penalties for submitting false information that I do not believe to be true, including the possibility of fine and imprisonment for knowing violations."*

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**1.02 REQUIRED TRAINING:**

- A. Effective April 30, 2010, the SPDES General Permit also requires the Prime Contractor and all subcontractors performing earthwork or soil-disturbing activities to identify at least one trained individual from each company who will be responsible for implementing the SWPPP and who shall be on-site on a daily basis when the company is performing soil disturbance activities. These activities include clearing, grubbing, grading, filling, excavation, stockpiling, demolition, landscaping, and installation and maintenance of Erosion & Sediment Control practices. Training must consist of 4 hours of NYSDEC-endorsed Erosion & Sediment Control Training every

3 years. Training is not required if the individual is a licensed Professional Engineer, registered licensed Landscape Architect, or CPESC. Provide the information below for trained individuals who will be on-site and responsible for SWPPP implementation on this Contract (attach a separate sheet if needed for additional trained individuals):

Trained Individual Name/Title: \_\_\_\_\_

Name of Training Course: \_\_\_\_\_

Trainee Number: \_\_\_\_\_ Date of Training: \_\_\_\_\_

Trained Individual Name/Title: \_\_\_\_\_

Name of Training Course: \_\_\_\_\_

Trainee Number: \_\_\_\_\_ Date of Training: \_\_\_\_\_

Trained Individual Name/Title: \_\_\_\_\_

Name of Training Course: \_\_\_\_\_

Trainee Number: \_\_\_\_\_ Date of Training: \_\_\_\_\_

Trained Individual Name/Title: \_\_\_\_\_

Name of Training Course: \_\_\_\_\_

Trainee Number: \_\_\_\_\_ Date of Training: \_\_\_\_\_

**END OF SECTION 00 7353**