

LEGAL NOTICE Town of Duanesburg

Legal Notice Town of Duanesburg, 5853 Western Turnpike, Duanesburg, New York 12056 RFP FOR TOWN HALL GENERATOR PROJECT. NOTICE IS HEREBY GIVEN, that the Town of Duanesburg will receive sealed proposals for the installation of a generator at the Town Hall. Such sealed proposals must be filed with the Town Clerk of the Town of Duanesburg, 5853 Western Turnpike, Duanesburg, New York 12056, PRIOR TO 3:00 P.M. EST on May 9, 2024. Copies of the Request For Bids are available on the Town of Duanesburg website (www.duanesburg.net) and at the Town Clerk's Office located at 5853 Western Turnpike, Duanesburg, New York 12056. A non-mandatory walk-through will be held on May 2, 2024 at 2:00 PM at 5853 Western Turnpike, Duanesburg, New York 12056. Respondents may submit inquiries until 2:00 PM on May 8, 2024. Proposals will be opened publicly during the regularly scheduled Town Board Meeting on May 9, 2024 at 7:00 PM. It is expected that the project will be awarded no later than May 30, 2024. The labor on this project shall be performed in all respects in full accordance with the Labor Law of the State of New York. Contractors must conform to the New York State prevailing wage rate schedules which are annexed to and form a part of the specifications for this project. The Town of Duanesburg reserves the right to reject any or all proposals.

REQUEST FOR BIDS
TOWN HALL GENERATOR

April 29, 2024

Town of Duanesburg
5853 Western Turnpike
Duanesburg, New York 12056

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I. INTRODUCTION

The Town of Duanesburg (the "Town") is a municipal corporation with offices located at 5853 Western Turnpike, Duanesburg, New York 12056.

The Town is soliciting, through this Request for Bids ("RFB"), proposals from qualified interested parties to provide services for the installation of a generator (the "Project") at the Town Hall building located at 5853 Western Turnpike, Duanesburg, New York 12056 (the "Town Hall"). The Town is seeking qualified, experienced and responsible contractors with a documented track record of successful completion of municipal construction projects within New York State (hereinafter referred to as "Respondent" or "Contractor").

Selection Criteria are described in greater detail in Section V herein, and include, among others, the experience of the Respondent, competitive terms, and ability to deliver and mobilize within the timeframes as specified. Plans for the work are set forth on **Exhibit A**, attached hereto and made a part hereof (the "Plans").

In accordance with Section 103-d of the General Municipal Law, at the time Contractor submits its bid, an authorized and responsible person shall execute and deliver a non-collusive bidding certification on Contractor's behalf in the form set forth on **Exhibit B**.

In accordance with Chapter 1 of the 2012 Laws of New York, the provision to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, at the time Contractor submits its bid, an authorized and responsible person shall execute and deliver a Certificate of Compliance with the Iran Divestment Act, in the form set forth on **Exhibit C**.

II. RFB TIMELINE

Solicitation issued:	April 29, 2024
Non-Mandatory Walk Through	May 2, 2024, 2:00 PM EST
End of Respondent inquiry period:	May 8, 2024, 2:00 PM EST
Submission deadline:	May 9, 2024, 3:00 PM EST

III. SCOPE OF SERVICES

1. Respondent shall provide a description of the work and shall provide details for the implementation of the Project. Respondent shall describe how work is to be performed and what site safety measures will be implemented during construction.
2. Respondent shall describe work to be completed as part of this project in accordance with the Plans. Respondent shall provide information regarding safety measures to be implemented as part of this work.
3. Additional responsibilities of the Contractor shall include coordination of installation with other contractors working on the addition to the Town Hall.

4. Contractor shall be responsible for obtaining any and all necessary permits with respect to the work. Contractor shall exercise caution so as not to damage municipal infrastructure.
5. Contractor shall be responsible for adjacent property protection.
6. No Contractor shall commence work until the Contractor has obtained all the insurance required by the Town in accordance with Section VIII, herein.

IV. PROPOSAL REQUIREMENTS

The following are the submission requirements for all Proposals. The Town reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFB requirements. The Town also reserves the right, in its sole discretion, to reject any and all Proposals or to waive any formality or technicality in any bid, if it believes that the public interest will be promoted thereby.

Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFB.

A. Format of Responses

Please respond to the set of questions that follows. Although there will be no set page limit, we ask that all Responses be limited to the questions proposed and not include any extraneous information or appendices. The Responses must be in the following required form: (1) questions must be answered in the order presented, (2) each response must be numbered to correspond with the question being answered and must be preceded by a restatement of the question, (3) each page must be numbered, (4) include Exhibits A through F in the Response, and (5) each copy of the Response must be bound in one volume.

DO NOT SEND RESPONSES BY FAX OR EMAIL. RESPONSES WILL BE ACCEPTED ONLY BY MAIL, HAND DELIVERY OR EXPRESS-MAIL DELIVERY SERVICES.

If any proprietary information is contained in the response, it should be clearly identified.

B. Response Content

1. Responses should list **the cost of the work** excluding the expenses incurred in preparing and submitting this Response. Payments will not exceed these amounts regardless of the actual costs incurred in completing the services. Contractor shall also include within the bid price prevailing wages. Sample wage schedules are attached hereto as Exhibit J. In the event the Contractor does not pay prevailing wage in

connection with the project, the Contractor assumes sole responsibility for any claims associated with the failure to pay prevailing wage, waives any claims it may have against the Town arising out of the party's failure to pay prevailing wage, and agrees to defend, indemnify, and hold harmless the Town against any and all claims by third parties, including administrative claims by the Department of Labor, arising out of the failure to pay prevailing wage. For purposes of this paragraph the word "claim," is intended to cover any and all forms of loss or liability, including without limitation, damages, attorneys' fees, costs, expenses, penalties, and/or interest.

2. The Respondent should address the following information: (a) business address, phone number, fax number, e-mail address, and Federal ID number for contractor's and all sub-contractors; (b) a brief description of the firm's history and experience in providing services covered by this RFB; and (c) describe other projects involving similar works (including name of clients served, and length of time providing such services).
3. Respondent shall provide a description and past experience of their company, and subcontractors with regard to municipal construction work. This task shall include general location and dates of previous municipal construction work. Contractor shall also provide references including municipalities and governmental agencies (if applicable) where similar work has been performed over the past five years.
4. Respondent shall include three (3) years of financial records, which may include tax returns.
5. Resumes describing the qualifications and background of the primary contact person and other key staff who will be assigned to projects covered by this RFB. If Respondent intends to use the services of a subcontractor, provide resumes for each subcontractor. Descriptions of how the primary contact person and other key personnel meet the general qualifications described in Section II, Scope of Services shall be provided. Please note that the individuals listed will be expected to be available should the Town request to conduct interviews. Such resumes should describe relevant training and experience as it relates to the Scope of Services.
6. Provide a list of three to five relevant client references, including a contact person's name, address and phone number.
7. Prepare a project schedule to be included as part of the proposal. Schedule should include a begin work date and completion date.
8. The successful Respondent shall be responsible for all expenses related to the work, and the safe work environment of the site.
9. All submissions must include an EEO Policy Statement stating the Respondent's non-discriminatory policy in accordance with federal and state laws. This form or the Respondent's EEO Policy must be signed and submitted as part of any Response. **The Respondent's EEO Policy must be completed and submitted with the response to RFB.**
10. Contractor must make a good faith effort to meet New York State's minority and women-owned business ("M/WBE") participation goals, in effect and as amended from time to time.

V. SELECTION CRITERIA

Generally, the selected Respondent must have the experience and capacity to complete the work in a timely manner, without interruption. It will be the Contractor's responsibility to perform the work in accordance with applicable state and federal regulations as noted within this proposal, utilizing work safe practices in line with New York State laws and regulations, Occupational Safety and Health Administration ("OSHA") regulations.

In evaluating received Proposals, the Town will use the following Selection Criteria to select the Designated Contractor:

- *Financial Offer*: Provision of competitive construction costs for the Contract.
- *Financial Feasibility*: Respondent's demonstrated financial condition to complete the Project; sufficient revenue to support operating revenues, and no substantial debt.
- *Experience*: Respondent's and its designated employees' municipal construction experience, skills, and resources necessary to complete the project on time and within budget, including experience of relevant structures, references of equivalent scale and experience with municipal agencies.
- *Schedule and Timing*: Respondent shall submit a completion timeline identifying the estimated length of time to complete all work. Any contingencies that may affect this time line should be identified. Respondent must be able to mobilize and commence work immediately; time is of the essence. The Contractor shall be able to commence work no later than ten (10) days after receipt of all necessary approvals.
- *Overall Approach and Understanding of the RFB and work*: As evidenced by complete submission, among other things.

The Town also reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of their proposals and to ensure a full and complete understanding of each proposal. The Town shall undertake to pursue uniformity in the questions it asks to Respondents to the extent practicable, but the Town may ask different or additional questions to different Respondents in the context of individual interviews or written questions. The Town shall designate a staff member who shall be the permissible contact for the purpose of such interviews and Respondents who are invited to interview will receive additional instructions about the interview format and any further requests for information.

VI. SUBMISSIONS

1. Delivery of Copies

Respondent must submit (3) copies of the Response, including accompanying exhibits. No materials will be accepted after the due date and time. Any material received after the stated date and time will be considered late and will be returned to the Respondent unopened. Responses will be time stamped by the Town.

The mailings must be marked "Town Hall Generator Project" They will be kept unopened until the deadline. Late proposals will be marked "Received Past Deadline" and returned unopened. The Town, in its sole discretion, reserves the right to accept or reject any or all responses received as a result of this request, to negotiate with any qualified source, or to cancel in part or in its entirety this RFB. The Town may request additional information from the Respondents during the course of the selection process and all responses will become the property of the Town.

PROPOSALS WILL BE ACCEPTED UNTIL 3:00 P.M. ON May 9, 2024. The Responses should be delivered to:

Jennifer Howe
Town Clerk
Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

PLEASE DO NOT SEND RESPONSES BY E-MAIL OR FAX. RESPONSES WILL BE ACCEPTED ONLY BY MAIL, HAND DELIVERY OR EXPRESS-MAIL DELIVERY SERVICES.

2. RFB Inquiries

Questions regarding this RFB may be submitted via e-mail to Chris Parslow at CParslow@duanesburg.net until 2:00 PM EDT May 8, 2024. Questions sent or delivered to any other individual may not be considered for response and will be grounds for disqualification. If any prospective Respondent finds discrepancies or omissions or there is doubt as to the true meaning of any part of this RFB, a written request for a clarification or interpretation shall be submitted to the Town only at the above address. In turn, the Town shall notify all candidates of record of such clarifications.

The Respondent must agree to comply with all procedures of the Town related to permissible contacts.

A non-mandatory walk through will be held on May 2, 2024. The walk through will begin promptly at 2:00 PM, at 5853 Western Turnpike, Duanesburg, New York 12056.

VII. STATEMENT OF LIMITATIONS

1. This RFB, submissions from Respondents to this RFB, and any relationship between Town and Respondents arising from or connected or related to this RFB, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFB. By responding to this RFB, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFB, the Respondent acknowledges and accepts the Town's rights as set forth in the RFB, including this Statement of Limitations.

2. Responses meeting the submission requirements will be reviewed promptly. The Town, at its sole discretion, may reject any and all proposals, or seek additional information (additional documentation, interviews, etc.) on any or all proposals, or choose not to award a contract(s) as a result of this solicitation. The Town shall be under no obligation to execute an agreement but by submitting this RFB, the Respondent shall negotiate in good faith on the terms of the proposal. The Town's form of agreement is attached as **EXHIBIT G**. By responding to this RFB the Respondent acknowledges and is willing to execute such form in substantially the condition it is in.
3. The Town reserves the right to: (i) amend, modify, or withdraw this RFB; (ii) revise any requirements of this RFB; (iii) require supplemental statements or information from any responding party; (iv) accept or reject any or all responses thereto; (v) extend the deadline for submission of responses thereto; (vi) negotiate or hold discussions with any respondent and to correct deficient responses which do not completely conform to the instructions contained herein; and (vii) cancel, in whole or part, this RFB, for any reason or for no reason. The Town may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.
4. Construction work shall commence within ten (10) days of receipt of required approvals. If for any reason Contractor cannot complete the work after submitting the accepted bid, said contractor may, at the Town's discretion, be removed either temporarily or permanently, from participation with the Town's projects.
5. This bid and proposal is not assignable or conveyable in any fashion and may not be pledged or encumbered without the express written permission of the Town. Awards for the engagement by the Town are expected no later than May 30, 2024.
6. **Respondents must rely on their own research and investigations for all matters, including, without limitation, costs, permitting, financing, construction, and renovation.**
7. The Town reserves the right, in its sole discretion, without liability, to utilize any or all of the RFB responses, including late responses, in its planning efforts. The Town reserves the right to retain and use all the materials and information, and any ideas or suggestions therein, submitted in response to this RFB (collectively, the "Response Information") for any purpose. By submitting a Response, each Respondent waives any and all claims against the Town relating to the Town's retention or use of the Response Information.
8. This RFB shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the RFB. The Town will not be responsible for any costs incurred by Respondents related to preparing and submitting a response to this RFB, attending oral presentations, or for any other associated costs.

9. Contractor shall include within the bid price prevailing wages. Sample wage schedules are attached hereto as **Exhibit J**. In the event the Contractor does not pay prevailing wage in connection with the project, the Contractor assumes sole responsibility for any claims associated with the failure to pay prevailing wage, waives any claims it may have against the Town arising out of the party's failure to pay prevailing wage, and agrees to defend, indemnify, and hold harmless the Town against any and all claims by third parties, including administrative claims by the Department of Labor, arising out of the failure to pay prevailing wage. For purposes of this paragraph the word "claim," is intended to cover any and all forms of loss or liability, including without limitation, damages, attorneys' fees, costs, expenses, penalties, and/or interest.
10. To the best of the Town's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of responses.
11. CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS. Contractor acknowledges and agrees that the work is to be funded, in whole or in part, using American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery Funds. Contractor ensures that no costs of the work will be sought for or reimbursed by other federal or state funding streams. Contractor is subject to the applicable provisions and requirements of the following documents, which are incorporated herein by reference, where Treasury issues exceptions or waivers to any of the federal requirements stated in the documents below, such exceptions and waivers shall automatically be incorporated by reference into this agreement and control over any conflicting provisions of this Agreement:
 - .1 U.S. Department Of The Treasury Coronavirus Local Fiscal Recovery Fund Award Terms And Conditions (OMB Approved 1505-0271)
 - .2 Assurances Of Compliance With Civil Rights Requirements (OMB Approved 1505-0271).

VIII. INSURANCE AND BOND REQUIREMENTS

Respondent will be expected to show evidence of the following insurance requirements (at a minimum and to the extent applicable), as listed below:

1. Worker's compensation and employer's liability insurance in accordance with State statutory limits;
2. Comprehensive liability insurance (including contractual and contractor's protective liability coverage) with combined single limits of \$2,000,000 per occurrence, and \$2,000,000 in the aggregate for bodily injury and property damage;
3. Automobile liability coverage including owned and hired vehicles with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage; and

4. An excess/umbrella policy in the amount of \$5,000,00.

All such insurance policies shall be written by good and solvent insurance companies, licensed to do business in the State of New York, satisfactory to the Town. The comprehensive liability insurance, automobile liability insurance and the excess/umbrella policies shall all name the Town as an additional insured.

The Designated Contractor will be required to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price.

EXHIBIT A

Non-Collusive Bidding Certification

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

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

Signature

Title

Date

SWORN TO ME THIS _____
DAY OF _____ 2024

Notary Public

EXHIBIT B

Responsibility Questionnaire

You have selected the For-Profit Construction questionnaire, commonly known as the “CCA-2,” which may be printed and completed in this format or, **for your convenience, may be completed online using the [New York State VendRep System](#).**

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor’s business and operations. An owner or owner’s official representative authorized to legally bind the Reporting Entity, must certify the truth of the questionnaire answers.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at ITServiceDesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may not have their ordinary, common, or traditional meanings. Each vendor must read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the “New York State Vendor Responsibility Definitions List” existing at the time of certification.

RESPONSES

Every question must be answered fully. Each response must provide **all** relevant information to appropriately explain the answer. If you have concerns as to the legal requirements behind your answers, please seek clarification from your counsel. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required to be identified. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

BUSINESS ENTITY INFORMATION

<u>Legal Business Name</u>		<u>EIN</u> _____		
<u>Address of the Principal Place of Business (street, city, state, zip code) NO P.O. Boxes</u>		<u>New York State Vendor Identification Number</u>		
		Telephone ext.	Fax	
		Website (include all)		
Authorized Contact for this Questionnaire				
Name		Telephone ext.	Fax	
Title		Email		
Additional <u>Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years, the state or county where filed and the status (active or inactive).				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS1.0 Business Entity Type – Check appropriate box and provide additional information:

a) <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)	Date of Incorporation
b) <input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>	Date Organized
c) <input type="checkbox"/> <u>Limited Liability Partnership</u>	Date of Registration
d) <input type="checkbox"/> <u>Limited Partnership</u>	Date Established

I. BUSINESS CHARACTERISTICS

e) <input type="checkbox"/> <u>General Partnership</u>	Date Established County (if formed in NYS)
f) <input type="checkbox"/> <u>Sole Proprietor</u>	How many years in business?
g) <input type="checkbox"/> <u>Other</u>	Date Established
If Other, explain:	
1.0 Was the <u>Business Entity</u> formed in New York State?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
If "No," indicate jurisdiction where the <u>Business Entity</u> was formed:	
<input type="checkbox"/> <u>United States</u>	State
<input type="checkbox"/> <u>Other</u>	Countr y
1.2 Is the <u>Legal Business Entity</u> publicly traded?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
If "Yes," provide the <u>CIK code</u> or Ticker Symbol:	
1.3 Is the <u>Business Entity</u> currently <u>registered</u> to do business in New York State?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>Note: Select "Not Required" if the Business Entity is a Sole Proprietor or General Partnership</i>	
<input type="checkbox"/> Not Required	
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered</u> to do business in New York State:	
1.4 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.5 If the <u>Business Entity's</u> <u>Principal Place of Business</u> is not in New York State, does the <u>Business Entity</u> <u>maintain</u> an office in New York State?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>(Select "N/A" if <u>Principal Place of Business</u> is in New York State.)</i>	
<input type="checkbox"/> N/A	
If "Yes," provide the address and telephone number for one office located in New York State.	
1.6 Is the Business Entity a New York State certified <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , <u>Service-Disabled Veteran-Owned Business</u> , <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

I. BUSINESS CHARACTERISTICS

If "Yes," check all that apply:

- ☐ New York State certified Minority-Owned Business Enterprise (MBE)
- ☐ New York State certified Women-Owned Business Enterprise (WBE)
- ☐ New York State certified Service-Disabled Veteran-Owned Business (SDVOB)
- ☐ New York State Small Business
- ☐ Federally certified Disadvantaged Business Enterprise (DBE)

1.7 Identify **each person** or Business Entity that is or has been within the past five (5) years, a Business Entity Official, or a Principal Owner of 5.0% or more of the Reporting Entity's shares; or one of the five largest shareholders, if applicable. (*Attach additional pages if necessary.*)

Joint Ventures: Provide information for all firms involved.

Each Business Entity identified as a Principal Owner must also submit a Vendor Responsibility Questionnaire.

(Add additional sheets if necessary.) For each person, include name, title, date of birth, percentage of ownership, and employment status. For each Business Entity that is a Principal Owner, include name, address, EIN, and percentage of ownership.

If there is no person or Business Entity that owns 5% or more of the Reporting Entity, check here: ☐

Name (<i>For each person, include a middle initial</i>)	Title	Date of Birth	Percentage of ownership (Enter 0%, if not applicable)	Employment status with the firm
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
Name of <u>Each Business Entity</u> owning 5% or more of <u>Reporting Entity</u>	Address	EIN	Percentage Ownership	

I. BUSINESS CHARACTERISTICS

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS

2.0 Are there any other construction-related firms in which, now or in the past five years, the submitting Business Entity or any of the individuals or business entities listed in question 1.7 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner, or proprietor of said other firm?

☐ Yes ☐

If yes, identify below and if there is more than one, *attach additional pages with required information.*

Firm/Company Name

Firm/Company EIN
(If available)

Firm/Company's Primary Business
Activity

Firm/Company Address

Explain relationship with the firm and indicate percent of ownership, if applicable (enter N/A, if not applicable):

Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entity has in common with the disclosed firm(s)?

☐ Yes ☐

Individual's Name *(Include middle initial)*

Position/Title with Firm/Company

2.1 Does the Business Entity have any construction-related affiliates not identified in the response to question 2.0 above?

☐ Yes ☐

If yes, identify below and if there is more than one, *attach additional pages with the required information.*

Affiliate Name

Affiliate EIN (If available)

Affiliate's Primary Business Activity

Affiliate Address

Explain relationship with the affiliate and indicate percent of ownership, if applicable (*enter N/A, if not applicable*):

Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entity has in common with the disclosed affiliate(s)?

☐ Yes ☐

Individual's Name *(Include middle initial)*

Position/Title with Firm/Company

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS

2.2 Has the Business Entity participated in any construction-related Joint Ventures within the past three (3) years?

☐ Yes ☐

If yes, identify below and if there is more than one, *attach additional pages with the required information.*

Joint Venture Name

Joint Venture EIN (If available)

Identify parties to the Joint Venture

III. CONTRACT HISTORY

3.0 Has the Business Entity completed any construction contracts?

☐ Yes ☐

If "Yes," list the ten most recent construction contracts the Business Entity has completed for government clients using Attachment – Completed Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc.

At the Business Entity's option, it may include construction contracts completed for private clients. If less than ten, include most recent subcontracts on projects up to that number.

3.1 Does the Business Entity currently have uncompleted construction contracts?

☐ Yes ☐

If "Yes," list all current uncompleted construction contracts for government clients by using Attachment B – Uncompleted Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc.

Note: Ongoing projects must be included. At the Business Entity's option, it may include construction contracts uncompleted for private clients.

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement?

☐ Yes ☐

4.1 Been subject to a denial or revocation of a government prequalification?

☐ Yes ☐

4.2 Had any bid rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?

☐ Yes ☐

4.3 Had a proposed subcontract rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?

☐ Yes ☐

4.4 Had a bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract?

☐ Yes ☐

4.5 Agreed to a voluntary exclusion from bidding/contracting with a government entity?

☐ Yes ☐

4.6 Requested or been permitted to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity?

☐ Yes ☐

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

For each "Yes," provide an explanation of the issue(s), the Business Entity, affiliate, predecessor company or entity involved, the relationship to the submitting Business Entity, the government entity involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

5.0 Defaulted on or been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/>
5.1 Been subject to an <u>administrative proceeding</u> or civil action, including arbitration, seeking specific performance or restitution (except any disputed work proceeding) in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/>
5.2 Entered into a formal monitoring agreement, integrity agreement, consent decree, or stipulation, settlement as specified by, or agreed to with, any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/>
5.3 Had its surety called upon to complete any contract whether government or private sector?	<input type="checkbox"/> Yes <input type="checkbox"/>
5.4 Forfeited all or part of a standby letter of credit in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/>

For each "Yes," provide an explanation of the issue(s), the Business Entity, affiliate, predecessor company or entity involved, the relationship to the submitting Business Entity, the government entity/owners involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

6.0 Had a revocation or <u>suspension</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/>
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , <u>Service-Disabled Veteran-Owned Business</u> or a federal certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/>

For each "Yes," provide an explanation of the issue(s), the Business Entity, affiliate, predecessor company or entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

7.0 Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of: (i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or (ii.) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , Service-Disabled Veteran-Owned Business, or a <u>Disadvantaged Business Enterprise</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any <u>OSHA</u> citation, which resulted in a final determination classified as <u>serious</u> or <u>willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Had a New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Entered into a consent order, monitoring agreement or other type of oversight with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement entity involving a violation of <u>federal</u> , state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.6 Other than previously disclosed, been the subject of any <u>citations</u> , notices or violation orders; a pending administrative hearing, proceeding or determination of a violation of: <ul style="list-style-type: none">• <u>Federal</u>, state or local health laws, rules or regulations;• <u>Federal</u>, state or local environmental laws, rules or regulations;• Unemployment insurance or workers compensation coverage or <u>claim</u> requirements;• Any labor law or regulation, which was deemed willful;• Employee Retirement Income Security Act (ERISA);• <u>Federal</u>, state or local human rights laws;• <u>Federal</u>, state or local security laws;• <u>Federal</u>, state, or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each "Yes," provide an explanation of the issue(s), the Business Entity, affiliate, predecessor company or entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.

Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.

VIII. LEADERSHIP INTEGRITY

If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section. Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with any government entity been:

8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 <u>Suspended, debarred or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 The subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: (i.) Any business-related activity, including but not limited to theft, fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or (ii.) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<i>For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.</i>	

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY

9.0 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the Business Entity or affiliate involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses to explain the "Yes" response.</i>	
9.1 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000 for any reason, including failure to meet <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , <u>Service-Disabled Veteran-Owned Business</u> , or <u>Disadvantaged Business Enterprise goals</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY

If "Yes," provide an explanation of the issue(s), the name of the Business Entity or affiliate involved, the relationship to the submitting Business Entity, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s), and the balance of the assessment not yet paid. Provide answer below or attach additional sheets with numbered responses.

9.2 Within the past five (5) years, has the Business Entity or any affiliate had any liens, claims or judgments over \$25,000 filed against the Business Entity which remain undischarged or were unsatisfied for more than 90 days? (Note: Including but not limited to tax warrants or liens. Do not include UCC filings.)

☐ Yes ☐
No

If "Yes," provide an explanation of the issue(s), the name of the Business Entity or affiliate involved, the relationship to the submitting Business Entity, relevant dates, the Lien holder or Claimants' name(s), the amount of the lien(s), the current status of the issue(s), and the balance of the lien, claim or judgment not yet paid. Provide answer below or attach additional sheets with numbered responses.

9.3 In the last seven (7) years, has the Business Entity or any affiliate, or official initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?

☐ Yes ☐
No

If "Yes," provide the name of the Business Entity, affiliate or official involved, the relationship to the submitting Business Entity, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses to explain the YES response.

9.4 What is the Business Entity's Bonding Capacity?

a. Single Project

b. Aggregate (All Projects)

9.5 List Business Entity's Gross Sales for the previous three (3) Fiscal Years:

1st Year (Indicate year)
Gross Sales

2nd Year (Indicate year)
Gross Sales

3rd Year (Indicate year)
Gross Sales

9.6 List Business Entity's Average Backlog for the previous three (3) fiscal years:
(Estimated total value of uncompleted work on outstanding contracts)

1st Year (Indicate year)
Amount

2nd Year (Indicate year)
Amount

3rd Year (Indicate year)
Amount

9.7 Attach Business Entity's most recent annual financial statement and accompanying notes or complete Attachment C – Financial Information, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls.
(This information must be attached.)

X. FREEDOM OF INFORMATION LAW (FOIL)

10.0 Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).

☐ Yes ☐
No

Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.

If "Yes," indicate the question number(s) and explain the basis for the claim.

Authorizee**XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE**

Name	Telephone ext.	Fax
Title	Email	

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or federal law, as well as a finding of non-responsibility, contract suspension or contract termination.

It being acknowledged and agreed that all responses included in this questionnaire are to the knowledge, information and belief of the Business Entity, the undersigned certifies under penalties of perjury that they:

The undersigned certifies that he/she:

- are knowledgeable about the submitting Business Entity's business and operations;
- have legal authority to bind the Business Entity;
- have read and understand all of the questions contained in the questionnaire, including all definitions;
- have not altered the content of the questionnaire in any manner;
- have reviewed and/or supplied full and complete responses to each question;
- have provided true, accurate and complete responses, including all attachments, if applicable;
- understand that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- are under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of

Owner/Official

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip

Date

EXHIBIT C

Iranian Energy Sector Divestment Certification

A person that is identified on a list created pursuant to paragraph (b) of subdivision three of section one hundred sixty-five-a of the state finance law as a person engaging in investment activities in Iran as described in the following paragraph, shall not be deemed a responsible bidder or offeror pursuant to section one hundred three of the New York General Municipal Law.

For purposes of this Certification, a person engages in investment activities in Iran if:

- a. The person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- b. The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran.

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 its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law.

A bid shall not be considered for award nor shall any award be made where the bidder cannot make the aforementioned certification; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. A political subdivision may award a bid to a bidder who cannot make the certification pursuant to paragraph a of this subdivision on a case-by-case basis if:

- (1) The investment activities in Iran were made before the effective date of this section, the investment activities in Iran have not been expanded or renewed after the effective date of this section, and the person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
- (2) The political subdivision makes a determination that the goods or services are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

Signature

Title

Date

SWORN TO ME THIS _____
DAY OF _____ 2022

Notary Public

EXHIBIT D

Specifications

Furnish and install 50kw 120/240v single phase liquid cooled propane generator on poured concrete slab to be located as indicated on attached figure.

Furnish and install all needed wire and conduit.

Furnish and install stanchions to protect generator from traffic.

Perform start-up and testing of unit.

Unit to be configured with one main breaker.

Warranty and maintenance plan

Contract price shall include digging hole for propane tank to be supplied by Town, tank will be padded with sand and backfilled.

Contract price shall include digging ditch to building for electric line, backfill and spread crusher run in parking lot where line crosses driveway/parking lot.

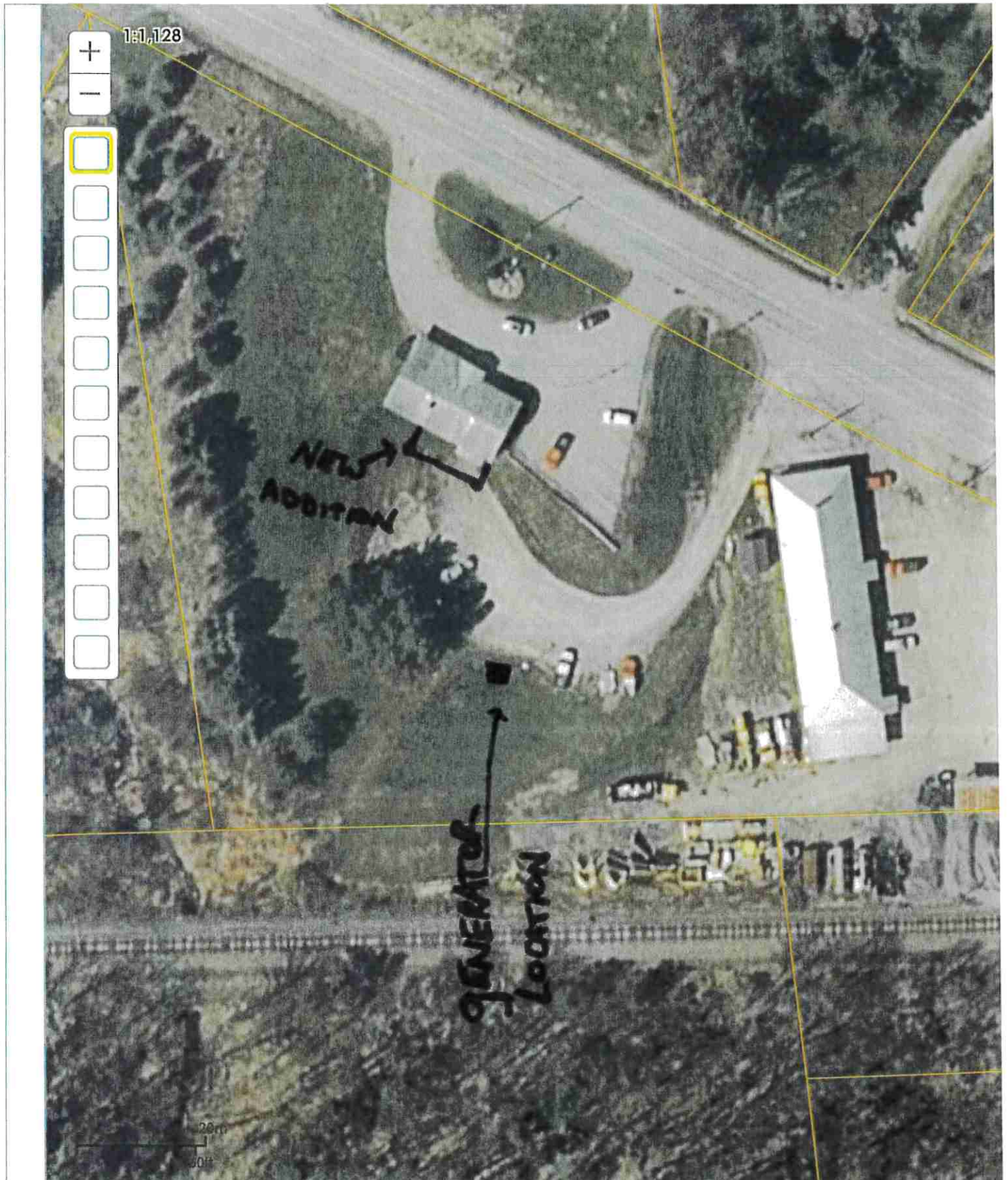


EXHIBIT E

Model Contractor Agreement

see attached

EXHIBIT F

NYSDOL Prevailing Wage Rates

see attached

DRAFT AIA® Document A104™ - 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the « » day of « » in the year «2024 »
(In words, indicate day, month and year.)

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

Town of Duanesburg
5853 Western Turnpike
Duanesburg, New York 12056

« »
« »
« »

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

»« »
« »
« »
« »

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

Town Hall - Generator»
5853 Western Turnpike
Duanesburg, New York 12056

«»
«»

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

« »« »N/A
« »
« »
« »

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.



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TABLE OF ARTICLES

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- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
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- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
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EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

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

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 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.)

«
-»

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

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

§ 2.3 Substantial Completion

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

(Check the appropriate box and complete the necessary information.)

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

[☐] By the following date: « »

~~§ 2.3.2 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

~~§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.~~

ARTICLE 3 CONTRACT SUM

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

(Check the appropriate box.)

[☒] Stipulated Sum, in accordance with Section 3.2 below

[☐] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[☐] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

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

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

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

«n/a »

§ 3.2.2 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
------	-------

§ 3.3 Cost of the Work Plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

«—»

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

«—»

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed «
» (\$ «—»), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

«—»

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

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

«—»

§ 3.4.3.3 Unit Prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)~~

Item	Price
------	-------

~~§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

~~« »~~

~~§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.~~

~~§ 3.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)~~

~~« »~~

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

~~§ 4.1.1 Based upon Applications for Payment submitted to the Architect by Owner 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.~~

~~§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:~~

~~« »~~

~~§ 4.1.3 Provided that an Application for Payment is received by the Owner not later than the «30th » day of a month, the Owner shall make payment of the certified amount to the Contractor not later than thirty (30) thirty-(30) days thereafter. If an Application for Payment is received by the Owner after the date fixed above, payment shall be made by the Owner not later than thirty (30) « thirty » («30 ») days after the Owner receives the Application for Payment. § 4.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)~~

~~§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:~~

~~(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)~~

~~« ten percent (10%) » Ten Percent (10%)~~

§ 4.1.5 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.)

« n/a » % « »

§ 4.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- ~~.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.~~

§ 4.2.2 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, or as follows:

« Thirty (30) days after Final Completion »

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[☐] Arbitration pursuant to Section 21.6 of this Agreement

[☒] Litigation in a court of competent jurisdiction

[☐] 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 in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as modified.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

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

« »

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

Section	Title	Date	Pages

§ 6.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« »

Number	Title	Date

§ 6.1.6 The 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 enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 Other Exhibits:
(Check all boxes that apply.)

[☐] Exhibit A, Determination of the Cost of the Work.

[☐] 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

[☐] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents.)

« Request for Proposals issued by the Owner attached as Exhibit A
Contractor's Response to RFP dated _____ as supplemented and clarified by response to
questions dated March 21, 2024, attached as Exhibit B »

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a Construction Change Directive, Directive, or (4) a written order for a minor change in the Work issued by the Architect. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

Unless otherwise set forth, in the event that there are discrepancies among terms, conditions and/or requirements relating to Contractor's performance, the most stringent terms, conditions and/or requirements shall control.

Contractor acknowledges and agrees that the Contract Documents are adequate and sufficient to provide for the completion of the Work, and include all Work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in accordance with all applicable laws, codes, and professional standards. Work includes all labor, materials, equipment and services to complete all specified procedures, repairs and waterproofing, satisfy all governmental conditions including but not limited to obtaining permits, etc., all necessary protection measures for safety and to preserve existing or adjacent Work, together with all attendant cleaning and removal of debris.

§ 7.2 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 between any persons or entities other than the Owner and the Contractor. Contractor expressly represents that the Contractor has carefully examined the Contract Documents and has performed a detailed investigation of the site (including but not limited to visiting and inspecting the Work areas and taking detailed field measurements), and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and all matters which may in any way affect the Work or its performance.

§ 7.3 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.

§ 7.4 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 Architectthe Owner and the Architect's consultantsOwner'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.

~~§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service~~

~~§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights 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.~~

~~§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.~~

~~§ 7.6 Digital Data Use and Transmission~~

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

~~§ 7.7 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.~~

~~§ 7.58 Severability~~

~~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.~~

~~§ 7.69 Notice~~

~~§ 7.69.1 Except as otherwise provided in Section 7.9.2, 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 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.)~~

« »

~~§ 7.69.2 Notice of Claims 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.~~

~~§ 7.740 Relationship of the Parties~~

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

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all reasonably necessary surveys and a legal description of the site.

§ 8.1.3 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.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. All additional costs incurred by Owner for retesting of failed products, systems or installed work shall be paid by the Contractor causing defects.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is 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.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure.~~ 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 21.

§ 8.4 Extent of Owner's Rights

The rights stated in this Article 8 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 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.

§ 9.1.2 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 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These

obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to ~~the Architect~~ the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Owner 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.

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

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 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.

§ 9.3 Labor and Materials

§ 9.3.1 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.

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

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, ~~after evaluation by the Architect~~ and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner ~~and Architect~~ that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. The foregoing warranties shall be in effect for a period of one (1) year from the date of Final Completion. All other 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 15.6.3. Notwithstanding anything contained in this Contract to the contrary, any claim or other cause of action by the Owner against the Contractor, any Subcontractor, or any Sub-subcontractor, supplier, agent or employee of any of them pursuant to this Section 9.4 may be made at any time within the time period specified in the applicable statute of limitations. The warranties provided pursuant to this Contract shall not be construed to modify or limit, in any way, any rights or actions which the Owner may otherwise have against the Contractor by law or statute, or in equity. All warranties, including all equipment warranties, will inure to the benefit of the Owner and the Owner's successors and assigns.

§ 9.4.1 As a condition to final payment, the Contractor shall assign and transfer to the Owner all guarantees, warranties and agreements from Contractor, all contractors, Subcontractors, Sub-subcontractors, vendors, suppliers or manufacturers regarding their performance, quality of workmanship or quality of materials or equipment supplied

in connection with the Work. The Contractor represents and warrants that all such guarantees, warranties, and agreements shall be in place and enforceable by the Owner in accordance with their terms.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations ~~concluded~~concluded whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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.

§ 9.6.2 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. 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.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

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

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner ~~and Architect~~.

~~**§ 9.9 Submittals**~~

~~**§ 9.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. 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. The Work shall be in accordance with approved submittals.~~

~~**§ 9.9.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.~~

~~**§ 9.9.3** 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for~~

~~the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.~~

§ 9.10 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.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

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 material from and about the Project.

§ 9.13 Access to Work

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

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner ~~and Architect~~ harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner ~~or Architect~~. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner-Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's~~ Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 — ARCHITECT

~~**§ 10.1** 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, unless otherwise modified in writing in accordance with other provisions of the Contract.~~

~~§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.~~

~~§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction 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 safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.~~

~~§ 10.4 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.~~

~~§ 10.5 Based on the Architect's evaluations of the Work and 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.~~

~~§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.~~

~~§ 10.7 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.~~

~~§ 10.8 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 will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.~~

~~§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~

ARTICLE 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 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 Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner ~~or Architect~~ has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of

the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 12.2 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 activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, and Contractor, ~~and Architect~~, or by written Construction Change Directive signed by the Owner ~~and Architect~~. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner ~~and Architect~~, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. ~~The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment.~~ When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

~~§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. 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 and shall not proceed to implement the change in the Work.~~

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner ~~and Architect~~ promptly and before conditions are disturbed.

ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the ~~Owner~~Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; ~~or~~ (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; ~~or (3) 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~~Owner may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the ~~Owner~~Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price 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~~Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

~~§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.~~

§ 15.2.2 The Control Estimate shall include:

- ~~1 the documents enumerated in Article 6, including all Modifications thereto;~~
- ~~2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;~~
- ~~3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;~~
- ~~4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and~~
- ~~5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.~~

~~§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.~~

~~§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.~~

~~§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.~~

§ 15.3 Applications for Payment

~~§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect-Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. 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 supplier unless such Work has been performed by others whom the Contractor intends to pay.~~

~~§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.~~

~~§ 15.3.3 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 stored, and protected from damage, off the site at a location agreed upon in writing.~~

~~§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.~~

§ 15.4 Certificates for Payment

~~§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.~~

~~§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations 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 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.~~

~~§ 15.4.3 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 15.4.2 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 15.4.1. If the Contractor and the 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 9.2.2, 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.

~~§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.~~

§ 15.5 Progress Payments

§ 15.5.1 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.

§ 15.5.2 ~~Neither the Owner nor Architect~~ shall ~~not~~ have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 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.

§ 15.5.4 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.

§ 15.6 Substantial Completion

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

§ 15.6.2 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-Owner~~ 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.

§ 15.6.3 Upon receipt of the Contractor's list, the ~~Architect will~~ Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the ~~Architect-Owner~~ determines that the Work or designated portion thereof is substantially complete, the ~~Architect-Owner~~ will issue a Certificate of Substantial Completion which 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.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the ~~Owner and Contractor~~ for ~~their-its~~ 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.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect-Owner~~ will promptly make such inspection and, when the ~~OwnerArchitect~~ finds the Work acceptable under the Contract Documents and the Contract fully performed ("Final Completion"), the ~~Architect-Owner~~ shall make final payment in accordance with this agreement. ~~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 stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 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.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or 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 the final Application for Payment.

§ 15.8 The Contractor expressly undertakes to defend the Owner, officers, directors and employees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Owner as a result of liens filed against the Work, the site of any of the Work, the Project site, and any improvements thereon, payments due the Contractor, or any portion of the Owner's property (collectively referred to in this Section 14.6 as "liens"). The Contractor hereby agrees to indemnify and hold the Owner and officers, directors and employees, harmless from and against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

§ 15.9 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than two hundred (200) percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 15.8, including, without limitation, the duty to defend and indemnify the Owner. The cost of any premiums incurred in connection with such bonds and security shall be the sole responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 15.10 Notwithstanding the foregoing, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole and absolute discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 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. 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.

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. 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 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 9.15.

Without limiting the foregoing, the Contractor shall be responsible to ensure that the building is secured at the lower level each night as well as the surrounding work site.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of 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~~ Owner of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 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 16.2.1 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.

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

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance

company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

« »

§ 17.1.2

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « two million dollars » (\$ «2,000,000.00 ») each occurrence, « Two Million Dollars » (\$ « 2,000,000.00 ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard, providing coverage for claims including

Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « » (\$ « ») each occurrence, « » (\$ « ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

An excess/umbrella policy in the amount of \$2,000,000.00.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars » (\$ «1,000,000.00 « » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations,

shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy. At Owner's request, the Contractor shall provide the Owner with complete copies of all required insurance policies.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, ~~the Architect, and the Architect's~~ the Owner's Consultants as 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 Owner as an~~ additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, ~~and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.~~

§ 17.1.13 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 this Section 17.1, 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.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits

§ 17.1.15 If Contractor should fail to purchase or maintain any of the insurance required under this Section 16, Owner shall be entitled to recover all damages arising from said failure, in addition to all other rights and remedies, even if Owner has itself obtained insurance to cover the same risks.

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

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

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with

property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, 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.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 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 (2.3)~~ 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 this 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 17.2.2.7 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.

§ 17.2.2.7.2 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 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Contractor shall furnish a Performance Bond and Labor and Material Bond meeting all statutory requirements of the State of New York, in form and substance satisfactory to the Owner and, unless indicated otherwise by the Owner, complying with the following specific requirements:

- .1 Except as otherwise required by statute, the form and substance of such bond shall be satisfactory to the Owner in their sole judgment.
- .2 The Bond shall be executed by a responsible surety licensed in the State of New York acceptable to the Owner.
- .3 The Performance Bond and the Labor and Material Bond shall each be in an amount acceptable to the Owner.
- .4 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the relevant power of attorney indicating the monetary limit of such power.
- .5 Every bond required by this Section 17.3.1 must display the surety's bond number.
- .6 A rider including the following provisions shall be attached to each bond:

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

~~§ 17.3 Performance Bond and Payment Bond~~

~~§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.~~

~~§ 17.3.2 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 18 CORRECTION OF WORK

~~§ 18.1 The Contractor shall promptly correct Work rejected by the Architect~~by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for ~~the Architect's~~ services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, 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 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of 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.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 Upon completion of any Work under or pursuant to this Section 18, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence solely with respect to any repairs and replacement to any part of the Work or other property that is damaged by the defective Work. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the ~~place where the Project is located~~ State of New York, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.~~

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. 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~~ Owner timely notice of when and where tests and inspections are to be made so that the ~~Architect-Owner~~ 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.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

« Dale Warner
Deputy Supervisor
Town of Duanesburg
5853 Western Turnpike
Duanesburg, New York 12056

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§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

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

§ 19.7 Section 103-a of the General Municipal Law and 139-a of the State Finance Law of the State of New York, provides the following is sufficient ground for cancellation of contract by municipal corporations, fire districts and the State: head of state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of city agency which is empowered to compel the attendance of witnesses and examine them under oath.

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

- (a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal, and to provide also that
- (b) any and all contracts made with any municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or with any fire district or any agency or official thereof on or after the first day of September nineteen hundred sixty, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the municipal corporation or fire district without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination shall be paid."

§ 19.8 Pursuant to Sections 103-b of the General Municipal Law and 139-b of the State Financial Law of the State of New York, the following is sufficient disqualification to contract with Municipal corporations, fire districts and the State:

"Any person who, when called before a grand jury, head of state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority, or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or with any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal or until disqualification shall be removed..."

§ 19.9 Section 103-d of the General Municipal Law and Section 139-d of the State Finance Law of the State of New York refers to the statement of non-collusion in bids and proposals to political sub-divisions of the state, fire district and the state as follows:

- (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:
 - (1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 - (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor, and
 - (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition."

§ 19.10 Section 103-e of the General Municipal Law of the State of New York — Conspiracies prevent competitive bidding on public contracts:

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

§ 19.11 Any and all bids and contract made or awarded by the Owner or any public department, agency or official thereof for work or services performed or to be performed, or goods sold or to be sold, are made subject to the provisions of Laws of 1959 Chapter 605, as amended, Laws of 1963 Chapter 956, as amended, and Laws of 1965 Chapter 1031, said Laws as now contained or as may hereinafter be amended."

§ 19.12 Foreign Contractors: Foreign contractors must comply with the provisions of Articles 9A and 16 of the Tax Law, as amended, prior to submission of the proposal for the performance of the Work. The certificate of the New York State Commissioner to the effect that all taxes have been paid by the foreign contractor shall be conclusive proof of the payment of taxes. The term "foreign contractor" as used in this subdivision means in the case of an individual, a person who is a legal resident of another state or foreign country; in the case of a firm or co-partnership, one having one or more partners who are legal residents of another state or foreign country; and in the case of a foreign corporation, one organized under the laws of a state other than the State of New York.

§ 19.13 Liens: Attention of all persons making proposals is specifically called to the provisions of Section 25, Subdivision 5, Section 25A and Section 25B of the Lien Law, as amended, in relation to funds being received by a Contractor for public improvement declared to constitute trust funds in the hands of such contractor to be applied first

to the payment of certain claims.

Within five (5) days after receipt from the Owner of notice to begin work on the job, the Contractor will furnish to the Owner written notice of the names of all sub-contractors to be employed on the job and the general items of work to be done by them and shall also, to the extent indicated in the notice to begin work, furnish written notice of the names of suppliers of materials to be used on the job. The Owner may disapprove for good cause any subcontractors or material supplier selected by the Contractor and shall give written notice of its disapproval, within five (5) days after receiving the names of the subcontractor or material suppliers, to the Contractor who shall thereupon promptly notify the Owner of the name of the sub-contractor or material supplier selected in replacement which shall again be subject to approval by the Owner.

§ 19.14 Labor Law/Municipal Law: The Contractor and every sub-contractor performing work at the site of the Project for which this Contract relates shall comply with the applicable provisions of the Labor Law and Municipal Law, as amended, of the State of New York.

§ 19.15 Legal Provisions Deemed Included: Each and every provision of any law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall read and be enforced as though it were included herein, and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such an insertion.

§ 19.16 Equal Opportunity

§ 19.16.1 The Contractor shall maintain policies of employment as follows:

§ 19.16.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or natural origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the policies of non-discrimination.

§ 19.16.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religions, color, sex or national origin.

19.17 CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS. Contractor acknowledges and agrees that the Work is to be funded, in whole or in part, using American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery Funds. Contractor ensures that no costs of the Work will be sought for or reimbursed by other federal or state funding streams. Contractor is subject to the applicable provisions and requirements of the following documents, which are incorporated herein by reference, where Treasury issues exceptions or waivers to any of the federal requirements stated in the documents below, such exceptions and waivers shall automatically be incorporated by reference into this agreement and control over any conflicting provisions of this Agreement:

- .1 U.S. Department Of The Treasury Coronavirus Local Fiscal Recovery
Fund Award Terms And Conditions (OMB Approved 1505-0271)

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

~~If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if~~ the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner ~~and the Architect~~, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, ~~and damages.~~

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

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

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, ~~upon certification by the Architect that sufficient cause exists to justify such action,~~ may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 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 Architect, upon application, and this~~ Owner. This obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed, ~~and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:~~

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

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ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, ~~including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect,~~ be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 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 18.2, shall be initiated by notice to the ~~Architect~~ other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 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 18.2, shall be initiated by notice to the other party.

§ 21.3 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 in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, 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 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution 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, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

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

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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

Town of Duanesburg

OWNER (Signature)

«William Wenzel, Town Supervisor »« »

(Printed name and title)

CONTRACTOR (Signature)

« - »« »

(Printed name and title)