

REGIONAL SCHOOL DISTRICT 8
BOARD OF EDUCATION
REQUEST FOR PROPOSAL
FOR CONSTRUCTION SERVICES FOR
ATHLETIC FIELDS IMPROVEMENTS
AT
RHAM HIGH SCHOOL
HEBRON, CONNECTICUT

INVITATION TO BID
RHAM HIGH SCHOOL
ATHLETIC FIELDS IMPROVEMENTS

HEBRON, CONNECTICUT
MAY 26, 2023

Regional School District 8 (“Reg. 8”) Board of Education is seeking competitive bids for construction services related to **the Improvements to the 316 North Field and the Competition Field, located at RHAM High School/Middle School Campus** in Hebron, CT. Scope of work for this project generally includes surveying, general earthwork, erosion control, site preparation, drainage improvements and establishment of lawn, as more fully described herein and in the plans and specifications.

This Invitation to Bid, Instructions to Bidders, and other Bidding Documents (as defined in the Instruction to Bidders) are available for viewing and downloading on Reg. 8’s website https://reg8.ss19.sharpschool.com/departments/business_office/r_f_p_bids and the Rivereast Newspaper. The plans and specifications for **“RHAM HIGH SCHOOL ATHLETIC FIELDS IMPROVEMENTS,”** will be available to bidders through Advanced Reprographics from <https://advancedrepro.net> on May 26, 2023.

Sealed Bids for **“RHAM HIGH SCHOOL ATHLETIC FIELDS IMPROVEMENTS”** may be mailed or delivered in person to: Eva Gallupe, Business Manager, in the Central Office for Reg. 8 at 85 Wall Street, Hebron, CT 06248 until **12:00 pm on June 28, 2023**. All bids will be publicly opened and will be read aloud. Bid Results will also be posted on the on-line plan service website for review within 24 hours of the due date. Emailed or faxed Bids will not be accepted. To obtain or review Bids refer to the bidding instructions.

Reg. 8 reserves the right to reject any or all Bids, in whole or in part. Any or all Bids may be rejected if there is any reason to believe that collusion exists among the bidders. Individual Bids may be rejected for irregularities of any kind, including without limitations, alteration of form, additions not called for, conditional Bids, incomplete Bids and unexplained erasures. Reg. 8 retains the right to waive any formality or procedural irregularities in the Bids received. Nothing should be constructed to limit in any way the right of Reg. 8 to reject any and all Bids, should Reg. 8 deem it to be in its best interest. No bidder may withdraw his Bid within sixty (60) days after the actual date of the opening thereof.

Any questions regarding the proposed work should be addressed, in writing, by e-mail to Michael Schlehofer, Director of Facilities at michael.schlehofer@rhamschools.org. Questions will not be considered past 2:00 pm on **June 16, 2023** and responses will be posted via addendum no later than 2:00 pm on **June 20, 2023**. There will be a pre-bid meeting at 10:00 am on **June 14, 2023** at RHAM High School 85 Wall Street, Hebron, CT 06248 Asst. Principals' conference room.

Eva Gallupe
Business Manager
Regional School District 8
85 Wall Street Hebron, CT 06248
(860) 228-2115
eva.gallupe@rhamschools.org

INSTRUCTIONS TO BIDDERS

RHAM HIGH SCHOOL ATHLETIC FIELDS IMPROVEMENTS

REGIONAL SCHOOL DISTRICT 8

1. INTRODUCTION:

The Regional School District 8 (“Reg. 8”) Board of Education is inviting qualified contractors to submit bids for the improvements to the **Rte. 316 North Field and the Competition Field located at RHAM High School/Middle School Campus**”, 85 Wall Street, Hebron, CT (the “Project”). The Project is described in more detail in Section 2 of these Instructions to Bidders.

This opportunity has been publicly advertised through the Invitation to Bid. The Project will be awarded to the Bidder determined and selected by Reg. 8 in the manner described in Section 7 of these Instructions.

Reg. 8 reserves the right to amend or withdraw this Request for Proposals (RFP) for any reason (including, but not limited to, the failure of Reg. 8 to approve the Project by vote at referendum or the lack of funding for the Project), to accept or reject any or all bids, to waive any informalities or non-material deficiencies in any bid submission, to award or not award a contract in connection with this RFP, and to award a contract to the bidder as deemed by Reg. 8 to be in the best interest of Reg. 8 and the District.

2. GENERAL SCOPE OF WORK

The Project Generally consists of the preparation and installation of the following:

A. General Earthwork and Erosion Control for both the Rte. 316 North Field and the Competition Field.

B. Rte. 316 North Field

1. Land Survey
2. Site Preparation
3. Fraise Mowing
4. Core Aeration
5. Drainage Improvements using linear aeration and sand injection
6. Re-Location of Irrigation Main Lines and Valve Boxes
7. Seeding
8. Top Dressing
9. Amendment Nutrition

10. Substantial Completion Field Testing Related Sections
 11. Grow-in and Establishment (3 months from seeding)
- C. Competition Field Track Drainage Improvements
1. Land Survey
 2. Site Preparation
 3. Saw cut of track and asphalt to the outside of the first lane
 4. Trench drain along edge of track in concrete band
 5. Connection of trench drain to existing structures
 6. Polyurethane track surface along edge of trench drain
 7. Establishment of lawn in disturbed areas

See also the plans and specifications for “**RHAM HIGH SCHOOL ATHLETIC FIELDS IMPROVEMENTS**” will be available to bidders through Advanced Reprographics from <https://advancedrepro.net>.

3. **SCHEDULE**

- A. Non-Mandatory pre-bid meeting at **10:00 AM on June 14, 2023** in the Asst. Principals’ Conference Room located at 85 Wall Street, Hebron, CT.
- B. All Requests for Information must be received no later than **2:00 PM on June 16, 2023** emailed to Michael Schlehofer, Director of Facilities at michael.schlehofer@rhamschools.org.
- C. Addenda will be posted to Reg. 8’s website https://reg8.ss19.sharpschool.com/departments/business_office/r_f_p_bids no later than **2:00 PM on June 20, 2023**.
- D. Bids must be submitted no later than **12:00 PM on June 28, 2023** (the “**Bid Deadline**”) at which time Reg. 8 will open the Bids publically.
- E. Reg. 8 intends to award the Contract on or around July 10, 2023.
- F. It is anticipated that the Project will commence upon a Notice to Proceed issued by the Awarding Authority. Work for Rte. 316 North is expected to last approximately 4 months, commencing in mid-August 2023. Work for the Competition Filed is expected to be performed in one month commencing by the end of July 2023.

Hours of work shall be between 7:00 AM and 5:00 PM weekdays. Contractor shall limit delivery of materials during the hours of 7:30-8:30 AM and 11:30 AM -12:30 PM to prevent conflicts with school drop-off and pickup. Work on weekends must be pre-approved. **Deviations from these hours must be previously approved by Reg. 8 in writing.**

4. **CONTENTS OF BIDS**

- A. Bids must include the following:
 - 1. Completed and fully executed Bid Form attached hereto as Exhibit A. The Bid Form must be executed by a duly authorized representative of the Bidder having legal authority to contract on behalf of the Bidder.
 - 2. The information and documents listed on Exhibit B.
- B. Please note the Selection Process described in Section 7 of these Instructions.
- C. Reg. 8 is tax exempt. The sales or use tax on materials or supplies exempted by regulations of the Connecticut Department of Revenue Services shall not be included as part of a bid price proposed by the Bidder for the Project (the “Bid Price”).
- D. The term “Bid Documents” shall mean and include these Instructions to Bidders and all exhibits and schedules attached hereto and such other documents and information as may otherwise be incorporated herein by reference.

5. **DELIVERY OF BIDS**

- A. Bids must be delivered by hand or by mail in sealed envelopes clearly marked with the **name and address of the Bidder** and the words “**RHAM HIGH SCHOOL ATHLETIC FIELDS IMPROVEMENTS**” to: Eva Gallupe, Business Manager, in the Central Office for Reg. 8 at 85 Wall Street, Hebron, CT 06248 by the Bid Deadline. Reg. 8 has no responsibility for any delays caused by the delivery process chosen by the Bidder. The bidder is to submit four (4) hard copies and one electronic copy.
- B. Bids must contain the items described in Section 3 of these Instructions.

6. **BID BOND**

- A. Each Bid shall be accompanied by Bid Security equal to ten (10) percent of the Bid amount in the form of a Bid Bond, Cash or a Certified, Treasurer’s or Cashier’s Check issued by a responsible U.S. bank or Trust Company, payable to “Regional School District 8”. Bid Bond amount shall include the cost of any Alternates, and the total bid price. Each Bidder shall attach the required Bid Bond or Check to the Bid Form.
- B. Failure of the Contractor to execute the Contract in accordance with its Bid shall result in the forfeiture of the Contractor’s bid bond.

7. **SELECTION PROCESS**

- A. Bids will be opened on June 28, 2023 at 12:00 PM. No Bidder may withdraw a Bid within 60 days after the date that the bids are opened.
- B. Reg. 8 will be responsible for evaluating the bids and for the selection of the Contract awardee. The evaluation criteria shall include (i) the quality of the Bidder's references, and (ii) the contents of the Bidder's Bid submission. Reg. 8 will award the Contract to the Bidder whose Bid meets the requirements, terms and conditions contained in the bid specifications and is the lowest among those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work based on objective criteria considering past performance and financial responsibility (the "Lowest Responsible Qualified Bidder")
- C. Any Bid not including the attendant submissions required hereunder shall be considered unresponsive and may be rejected by Reg. 8.
- D. Reg. 8 also reserves the right to negotiate further with one or more of the firms as to any features of their Bids and to accept modifications and clarifications of the Bid when such action will be in the best interests of the District.
- E. **Reg. 8 is AN Affirmative Action/Equal Opportunity Employer. Minority/Women Business Enterprises are encouraged to apply.**

8. **THE CONTRACT**

Reg. 8 intends to use, and the successful Bidder will be required to execute and deliver, a contract in a form substantially similar to the contract attached as Exhibit E (the "**Contract**"), to contract for the Project. Notwithstanding the foregoing, Reg. 8 reserves the right to further modify the Contract prior to its execution. If a Bidder has objections to any of the terms and conditions of the Contract, such objections should be specifically identified and included in the Bid submission.

9. **PERFORMANCE and PAYMENT BONDS**

- A. The successful General Contractor will be required to provide the Owner with Performance and Labor and Materials Payment Bonds, in the amount of 100% of the Contract Price, and the cost of the bonds shall be included in the Bid Amount.
 - 1. The bonds must be issued by a surety rated A minus or better by A.M. Best and listed on the U.S. Department of Treasury's Listing of Approved Sureties. The bonds must be submitted to Eva Gallupe, Business Manager, 85 Wall Street Hebron, CT 06248 at eva.gallupe@rhamschools.org.

- a. It is preferred that the bonds be written on the AIA Document 312 forms. Both bonds shall be written in the full amount of the Contract Price.
 - b. The bonds shall be dated the same date as the Contract.
 - c. Regional School District. 8 shall be named as the obligee on all bonds provided for the Project.
 - d. The bonds shall contain the following provision: “In the event that the surety assumes the contract or obtains a bid or bids for completion of the contract, the surety shall ensure that the contractor chosen to complete the contract is prequalified pursuant to section 4a-100 of the Connecticut general statutes in the requisite classification and has the aggregate work capacity rating and single project limit necessary to complete the contract”.
 - e. 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 power of attorney.
- B. Each Bidder shall furnish with its Bid, satisfactory evidence from its surety of such Bidder’s ability to obtain the required Performance and Labor and Materials Payment Bonds in the full amount of the Base Bid Amount.
 - C. Performance and Labor and Material Payment Bonds will be required from all subcontractors, except that in accordance with Connecticut General Statutes Sections 49-41, et. seq., the following restrictions apply:
 - 1. A Payment Bond shall not be required to be furnished in relation to any sub-bid in which the total estimated cost of labor and materials under the contract with respect to which such sub-bid is submitted is less than One Hundred Thousand Dollars (\$100,000.00).
 - 2. A Performance Bond shall not be required to be furnished in relation to any sub-bid in which the total estimated cost of labor and materials under the contract with respect to which such sub-bid is submitted is less than Fifty Thousand Dollars (\$50,000.00).

10. PREVAILING WAGE REQUIREMENTS

- A. Prevailing wages are required on this Project, pursuant to Connecticut General Statutes Section 31-53 (a) through (h), as amended. For further information on prevailing wage requirements, visit the Connecticut Department of Labor’s website. The wages applicable on this Project for the town of Hebron will be posted on July 1, 2023 on the Connecticut Department of Labor website: <https://www.ctdol.state.ct.us/wgwkstnd/prevailwage.htm>
- B. The Contractor and each subcontractor shall be subject to provisions of the Connecticut General Statutes, Section 31-55a concerning annual adjustments to prevailing wages.

- C. Wage Rates will be posted each July 1st on the Department of Labor website: <https://www.ctdol.state.ct.us/wgwkstnd/prevailwage.htm>. Such prevailing wage adjustments shall not be considered a matter for any contract amendment or adjustment to the Contract Price.
- D. The Contract shall provide, and the Contractor and subcontractors for the Project shall comply with the following: “The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of Connecticut General Statutes Section 31-53, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.”
- E. Certified Payrolls: In accordance with Connecticut General Statutes, 31-53 Certified Payrolls with a statement of compliance shall be submitted monthly by the Contractor to Reg. 8 and certified payrolls for the Contractor and all subcontractors working during the period shall be submitted with each Application for Payment submitted by the Contractor, covering all activities relating to such Application for Payment. Contractor shall provide pay scale verification as may be required by the Connecticut Department of Labor.
- F. Each Bidder shall confirm prior to submission of its Bid that the Bidder is carrying in its Bid and Base Bid Amount the proper trade classification for all work required for the Project including composite crews of different trade classifications if needed, as required by the State of Connecticut Department of Labor and/or union agencies if applicable.
- G. Forms and additional information can be found on the Connecticut Department of Labor’s website.

11. INSURANCE AND LIABILITY

- A. The successful bidder shall submit the minimum coverage as required below with an insurance company satisfactory to Regional School District 8 Minimum coverage shall be as follows:
 - 1. **Commercial General Liability** - \$1,000,000/occurrence with \$3,000,000/aggregate. Regional School District 8 shall be included as additional insured. Per project aggregate shall apply.
 - 2. **Workers Compensation** – Statutory. Employer’s Liability -

\$100,000/\$500,000/\$100,000.

3. **Automobile Liability Insurance** at a limit of not less than \$1,000,000 combined single limit.
 4. **Umbrella/Excess Liability** \$1,000,000, over the General Liability, Automobile Liability, and Employer Liability section of the Workers Compensation coverage.
- B. The proposer shall not cancel, change, or revise any insurance relating to this contract without at least 30 days prior notice. Prior to the effective date of any such cancellation, the contractor shall take out new insurance to cover the policies so canceled and shall provide certificates stating that such insurance is in effect.
- C. To the extent provided by law, the proposer agrees to indemnify, defend and hold harmless Reg. 8 against any and all suits, claims or liabilities of any name, nature or description arising out of or in consequence of the acts of its agents, servants or employees, in the performance of the obligations under this contract or by reason of its failure to fully comply with the terms of this contract, such indemnity to run to the Town Officers, Agents School Committee, and employees of Reg.8 and Town of Hebron employees.

FURTHER INFORMATION AND REQUIREMENTS

A. **NON-DISCRIMINATION**

Reg. 8 does not and shall not discriminate on the basis of race, color, religion, creed, gender identity, age, national origin, ancestry, ethnicity, disability, pregnancy/parenting status, marital status, sexual orientation, homelessness, veteran or military status, or political affiliation in any of its programs, activities, employment practices, provision of and access to programs and services, as well as selection of volunteers, vendors and employers recruiting at the Reg. 8. The following person has

B. **O.S.H.A. CERTIFICATION**

The contractor and their employees shall be CONN-OSHA safety qualified and have the proper documentation for this safety training, while on school property.

C BACKGROUND CHECK REQUIREMENT

The Contractor will be required to comply with all applicable laws, including, without limitation, the requirements set forth in Exhibit D.

EXHIBITS TO THESE INSTRUCTIONS:

- Exhibit A:** Bid Proposal Form
- Exhibit B:** Submission Requirements
- Exhibit C:** Non-collusion Affidavit
- Exhibit D:** Background Checks
- Exhibit E:** Form of Contract

EXHIBIT A

BID FORM

RHAM High School Athletic Fields Improvements

The undersigned hereby agrees to provide REG. 8 with the following costs as specified herein, except as noted:

DESCRIPTION: “RHAM High School Athletic Fields Improvements” **Hebron, Connecticut.**

BASE BID:

Practice Field

Land Survey \$ _____

Site Preparation \$ _____

Fraise Mowing \$ _____

Core Aeration \$ _____

Drainage Improvements using
linear aeration and sand injection \$ _____

Re-Location of Irrigation Main
Lines and Valve Boxes \$ _____

Seeding \$ _____

Top Dressing \$ _____

Amendment Nutrition \$ _____

Substantial Completion Field
Testing Related Sections \$ _____

Grow-in and Establishment
(3 months from seeding) \$ _____

Stadium Field

☐ Land Survey \$ _____

☐ Site Preparation \$ _____

	Sawcut of Track and Asphalt to outside of first lane	\$ _____
	Trench drain and connection to Existing drain structures	\$ _____
	Drainage Improvements using linear aeration and sand injection	\$ _____
	Polyurethane track surface between trench drain and first lane	\$ _____
	Seeding disturbed areas	\$ _____

Company Name: _____

Address: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Telephone Number: _____

**ANY DEVIATION FROM THE BID SPECIFICATIONS
MUST BE CLEARLY STATED**

ACKNOWLEDGE ALL ADDENDUMS BELOW

ADDENDUM #1: _____

ADDENDUM #2: _____

EXHIBIT B
RHAM High School Athletic Fields Improvements

SUBMISSION REQUIREMENTS

Bids should include the following information and documents organized and presented as provided and in the form listed below:

1. Bidder's History and General Qualifications: Provide a general statement of the Bidder's history and qualifications for the Project. [Use Exhibit B-1]
3. References: Provide references and the other information for at least three projects the Bidder has completed or is currently working on for educational institutions (preferably located in Connecticut) which projects are similar in character and scope to the Project. [Use Exhibit B-2] By submission of a proposal in response to the RFP, each Bidder authorizes Reg. 8 to contact the Bidder's disclosed references regarding the services performed by the Bidder in each case.
4. Financial Capability: Evidence that the Bidder is financially stable and capable of performing the Work and completing the Project. [Use Exhibit B-3]
5. Litigation: Descriptions of all pending and threatened litigation or arbitration in which the Bidder is named as a party as well as any judgments entered against the Bidder during the last five years. [Use Exhibit B-4]
6. Along with the information to be provided above, the Bidder shall submit the following:
 - Fully completed Bid Proposal Form [Use Exhibit A]
 - Completed and Executed Non-Collusion Affidavit [Use Exhibit C]
 - A list of the names and addresses of proposed subcontractors that will perform any part of the work for the Project on behalf of the Bidder. Reg. 8 reserves the right to reject any or all proposed subcontractors. In the event Reg. 8 so rejects any or all subcontractors proposed by a Bidder, such Bidder may, notwithstanding anything to the contrary in these Instructions, withdraw its Bid without penalty. Reg. 8 hereby reserves the right to allow a Bidder whose subcontractor or subcontractors are rejected hereunder, to re-submit a Bid with subcontractors acceptable to Reg. 8.

EXHIBIT B-1

STATEMENT OF QUALIFICATIONS AND EXPERIENCE

1. A Letter of Transmittal signed by a principal of the Bidder, not to exceed two (2) pages, describing in narrative form the company and the company's qualifications for the Project.
2. Company Overview:
 1. Name and location, including the office location that will be serving the Town
 2. Number of years the company has been in the business of providing the services or performing the work upon which they are bidding
 3. Number of employees and how many of them will be dedicated to the Project
 4. Evidence of the company's licensing/authority to do business in the State of Connecticut.
2. Client Base:
 - a. Names and contact information for the three references for whom or which the Bidder has provided services or performed work in the last 2 years in connection with projects similar in size and scope to the services and/or work upon which they are bidding. Provide Owner name and telephone number for each Project.
 - b. Provide a description of each of the three projects and the contractor's role in each project.
4. Company Information:
 - a. Name, email and telephone number of the Bidder's contact person.
 - b. A brief history of the company
 - c. A list of the Project team members that would be assigned to the Project and their roles and responsibilities
 - d. A list of the subcontractors that the Bidder would engage for the Project
 - e. A list of projects for which the company has provided services in the last five years which projects have similar challenges to the Project and indicate if any claims, disputes, arbitration or litigation proceedings have occurred on any of these projects. If so, identify if they were between Owner/Contractor or Contractor/Subcontractor and give the status of each.
5. Litigation/Disputes:

Provide information concerning any suits filed, judgments entered or claims made against your company during the last five (5) years with respect to contractual services provided by your company, or any declaration of default or termination for cause against your company with respect to such services.

6. Additional information, not included above, that the company feels may be useful and applicable to this Project and helpful to the Town's evaluation of the Bidder (limit response to two pages).

EXHIBIT B-2

REFERENCE CHECK

Please provide three (5) references:

1. Name

Contact Person

Telephone Number

Period of Contract

Type of Services Provided to Reference

2.

Name

Contact Person

Telephone Number

Period of Contract

Type of Services Provided to Reference

3.

Name

Contact Person

Telephone Number

Period of Contract

Type of Services Provided to Reference

4.

Name

Contact Person

Telephone Number

Period of Contract

Type of Services Provided to Reference

5.

Name

Contact Person

Telephone Number

Period of Contract

Type of Services Provided to Reference

EXHIBIT B-3

FINANCIAL CAPABILITY

Submit evidence that the Bidder is financially stable and capable of performing the work and completing the Project.

EXHIBIT B-4

PENDING OR THREATENED LITIGATION

For cases pending, please provide the following information for each matter:

1. Parties (suing or being sued)
2. Docket Number and Court
3. Brief Description and Status

JUDGMENTS

Please provide the following information for each matter:

1. Parties (suing or being sued)
2. Docket Number and Court
3. Brief Description and Amount of Judgment

(Attach additional sheets, if necessary.)

EXHIBIT C

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of _____) ss

County of _____)

_____, being first duly sworn, deposes and says that:

1 That he/she is a () Partner; () Officer; () Member; () Owner of the firm of:

the party making the foregoing proposal or bid;

2. He is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such Bid;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither the said Bidder, nor any of its officers, partners, owners, representatives, employees, or parties in interest, including this affiant has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or to fix any overhead, profit, or cost element of the bid price or the bid price of any bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against Reg. 8, or any other person interested in the contract; and
5. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.
6. All statements in said Bid are true.

(Signed) _____

(Title) _____

Sworn and subscribed before me

This _____ day of _____, 2023

Notary Public

My Commission Expires: _____

EXHIBIT D
BACKGROUND CHECKS

The successful Bidder (referred to as Contractor in this Exhibit) shall be required to comply with the following requirements:

Prohibited Activities and Background Check Requirements

Contractor shall comply with all applicable law including, without limitation, Connecticut General Statutes Section 10-222c, as applicable, and with the requirements set forth in this Exhibit.

Interaction with the School Community. The scope of the Work does not, and will not under any circumstances, require any contact with students or any other minors physically present in the facilities of, or the grounds surrounding, the school where the Project is located (the “School Grounds”). None of the Contractor, Subcontractors, Sub-subcontractor, or any of their respective employees, agents or representatives shall, under any circumstances, converse or interact in any manner, with students or any minors physically present on the School Grounds. None of the Contractor, Subcontractors, Sub-subcontractor, or any of their respective employees, agents or representatives shall interact with any adult members of the school community (including, without limitation, employees, officials, or visitors, including parents of students enrolled in the District’s schools) with respect to the Project with the exception of the District’s Designated Representative as provided in the Contract. All of the Contractor, Subcontractors, Sub-subcontractors, and their respective employees, agents or representatives shall, while on the School Grounds, refrain from use of vulgar language, obscene gestures, or any other behavior inappropriate for a school environment and/or property on which minor children are or may be present.

Background and Employment History Checks.

To the extent permitted by law, the Contractor shall perform (or cause to be performed) as regards all of its employees, agents, and representatives (each, a “Contractor Employee”), and all of the employees, agents, and representatives of Subcontractors and Sub-subcontractors (each, a “Subcontractor Employee”), who will be physically present on the School Grounds in connection with the Project, appropriate background checks on all such Contractor Employees and Subcontractor Employees. Such background checks shall include, at a minimum and without limitation, a search of both the Connecticut Department of Emergency Services and Public Protection’s sexual offender registry and the Abuse and Neglect Registry of the Connecticut Department of Children and Families. For those Contractor Employees and Subcontractor Employees who are to be physically present on the School Grounds in connection with the Project and whose current or most recent employment occurred out of state, the out-of-state equivalent of the Connecticut Department of Emergency Services and Public Protection’s sexual offender registry and the Abuse and Neglect Registry of the Connecticut Department of Children and Families registry shall be checked. The Contractor shall complete (or cause to be completed) background checks as to each Contractor Employee and Subcontractor Employee prior to such Contractor Employee or Subcontractor Employee being permitted to be physically present on the

School Grounds. If the Contractor receives any information indicating that any Contractor Employee or Subcontractor Employee may be registered as a sexual offender, may have a record of abuse or neglect, or is, in any other manner, unfit to perform services which could involve direct contact with minor children, or which may involve working in or near property on which minor children may be present, the Contractor shall immediately forward such information to the District, to the extent permitted by law, and shall immediately remove the individual from the School Grounds and from participation in the Project.

Contractor represents and warrants that, in its best professional judgment, each Contractor Employee and each Subcontractor Employee maintains the appropriate qualifications and is fit to perform services which could involve direct contact with minor children, or which may involve working in or near property on which minor children may be present. The Contractor shall immediately remove any Contractor Employee or Subcontractor Employee from the School Grounds and from the Project if requested to do so by the District (which request shall be made in the District's sole discretion) or if it becomes known to the Contractor that such Contractor Employee or Subcontractor Employee may be a danger to the health, safety or well-being of the school community, its students, or any minor children. A request by the District to remove any Contractor Employee or Subcontractor Employee from the School Grounds and from the Project shall not constitute a breach of the Contract.

The Contractor shall include, and shall require all Subcontractors to include the foregoing requirements in all subcontracts for the Project.

By execution of the Contract, the Contractor shall represent and warrant that it has fully complied with the requirements of this Exhibit. To the extent permitted by law, the Contractor agrees that upon the District's request, Contractor shall promptly provide the District with any documentation related to such compliance, including, without limitation, the results of the background and employment history checks required by this Exhibit. Failure by the Contractor to comply with its obligations under this Exhibit shall constitute a material breach of the Contract.

EXHIBIT E
FORM OF CONTRACT

EXHIBIT E
FORM OF CONTRACT

This is a revised AIA A104. A redline version is available upon request.
DRAFT AIA Document A104® - 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the « » day of «July » in the year «2023 »
(In words, indicate day, month and year.)

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

«Regional School District 8 »« »
«85 Wall Street »
«Hebron, CT 06248 »
« »

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

« »« »
« »
« »
« »

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

«RHAM High School Athletic Field Improvements (Improvements to the 316 North Field and the Competition Field) »
«85 Wall Street »
«Hebron, CT 06248 »

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

«Traverse Landscape Architects, in its capacity as a consultant to Tom Irwin Advisors»«150 Chestnut Street, 4th Floor »
«Providence, RI 02903 »
«The address of Tom Irwin Advisors is 13A Street, Burlington, MA 01803 »
« »

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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ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in, reasonably inferable from, and as necessary to produce the results intended by, the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Contractor's deliverables, and details thereof, are set forth in Exhibits A and B attached hereto and as may be supplemented by the terms and provisions of the Contract Documents.

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 Competition Field on or before August 25, 2023 and shall achieve Substantial Completion of the North 316 Field on or before November 30, 2023 in accordance with the construction schedule attached (or to be attached) hereto as Exhibit C pursuant to Section 9.8.1:

§ 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: see Section 2.3.1 above.

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.)

« »

§ 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

Intentionally Omitted

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

Intentionally Omitted.

§ 3.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

«TIME IS OF THE ESSENCE in the completion of the Work. It is acknowledged that the Contractor's failure to achieve Substantial Completion of the Work relating to the Competition Field and the North 316 Field by the respective dates set forth in Section 2.3.1 above will cause the Owner to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Owner of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Owner as against the Contractor and its Surety in the event of delayed completion, without the Owner being required to present any evidence of the amount or character of actual damages sustained by reason thereof. Therefore, Contractor shall be liable to the Owner for payment of liquidated damages in the amount of One Thousand Dollars (\$1,000) for each day that Substantial Completion of the Competition Field and the North 316 Field is delayed beyond the respective dates required for their Substantial Completion, as adjusted for time extensions as may have been granted pursuant to the terms and conditions of the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to Owner without limiting Owner's right to terminate the Contract as provided herein and in the Contract Documents.

The parties understand and agree that, by including a provision for liquidated damaged in this Agreement, or in pursuing any relief pursuant to such provision: (i) the parties do not intend to set a price for the privilege not to perform; (ii) the availability of liquidated damages may not be relied upon as a basis for argument that the Owner has an adequate remedy at law; and (iii) the remedies available to the Owner under the Contract Documents are cumulative and not exclusive. »

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

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

§ 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 Architect not later than the «last » day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the «last » day of the «following » 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 «thirty » («30 ») days after the Architect receives the Application for Payment.

Each Application for Payment submitted by the Contractor shall include a statement showing the status of all pending construction change orders, other pending change directives and approved changes to the original Contract or Subcontract. Such statement shall identify the pending construction change orders and other pending change directives, and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed. As used in this subsection, "pending construction change order" or "other pending change directive", means an authorized directive for extra work that has been issued to the Contractor or a Subcontractor.

The Contractor, within ten (10) days after payment to the Contractor by the Owner shall pay any amounts due any Subcontractor, whether for labor performed or materials furnished, when the labor or materials have been included in a requisition submitted by the Contractor and paid by the Owner. The Contractor shall promptly give notice to the Owner of any claim or demand by a Subcontractor claiming that any amount is due to such Subcontractor or claiming any default by the Contractor in any of the Contractor's obligations to such Subcontractor.

The Contractor shall include in each of its Subcontracts a provision requiring each Subcontractor to pay any amounts due any of its subcontractors, whether for labor performed or materials furnished, within ten (10) days after such Subcontractor receives a payment from the Contractor which encompasses labor or materials furnished by the sub-subcontractor and a provision requiring each Subcontractor to promptly give notice to the Contractor of any claim or demand by a Sub-subcontractor claiming that any amount is due to such Sub-subcontractor or claiming any default by such Subcontractor in any of its obligations to such Sub-subcontractor which notice the Contractor shall promptly relay to the Owner.

§ 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.)

«5% »

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest only to the extent required by Connecticut law and, if so required, at the minimum rate required.

§ 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 Work and all of its obligations under 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 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 conditions set forth in Sections 4.2.1 and 4.2.3 have been met.

§ 4.2.3 At the Owner's request, the Contractor shall also furnish to the Owner prior to final payment a complete record set of drawing and specifications depicting the completed Project.

§ 4.3 Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make payment to the Contractor hereunder to the extent any one or more of the following conditions exist:

- .1 The Contractor is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents;
- .2 Any part of such payment is attributable to Work which the Owner or Architect determines, because of the fault or neglect of the Contractor, any Subcontractor or Sub-subcontractor is defective or not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to the Work which is performed in accordance with the Contract Documents and is not otherwise defective; or
- .3 The Contractor has failed to make payments properly to the Contractor's Subcontractors or for material or labor used in the Work for which the Owner has made payment to the Contractor.

§ 4.4 The Contractor shall use the sums advanced to it solely for the purpose of performance of the Work and the construction, furnishing, and equipping of the improvements in accordance with the Contract Documents.

§ 4.5 Commencing with the second Application for Payment, and continuing with each Application for Payment submitted thereafter, the Contractor shall furnish to the Owner a properly executed release and waiver of claims/mechanics liens from the Contractor and each Subcontractor and material or equipment supplier whose Work was included on the previous Application for Payment for which payment by Owner was made to the Contractor.

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.)

☒ [«X »] Arbitration pursuant to Section 21.6 of this Agreement

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

☐ [« »] Other (Specify)

☐ « »

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 herein 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.)

«N/A »

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 6.1.4 The Specifications/Scope of Work:

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

«See Request for Proposal dated March 26, 2023 and Contractor's Response and accompanying documents (but only to the extent they describe the actual Work to be performed under this Agreement), dated October 27, 2022, to the RFP (together attached hereto as Exhibit A, and also refer to Exhibit B)»

Section	Title	Date	Pages

§ 6.1.5 The Drawings:

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

«See Exhibit B »

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.)

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.)

«Exhibit A – RFP and Contractor's Response to RFP
Exhibit B – Specifications and Drawings
Exhibit C - Construction Schedule
Exhibit D – Wage Requirements »

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, (3) a Construction Change 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. If the Contractor discovers any inconsistency within, between or among parts of the Contract Documents or

between the Contract Documents and applicable standards, codes or ordinances, the Contractor shall give notice to the Owner of such inconsistency and shall, unless otherwise ordered in writing by the Owner, provide work or materials of the better quality, greater quantity, or that otherwise comply with applicable standards, codes and ordinances.

§ 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.

§ 7.3 The Work

§ 7.3.1 The term “Work” means the construction and services required by, reasonably inferable from, and as necessary to produce the results intended 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.

§ 7.3.1.1 Where no explicit quality or standards for materials or workmanship are established for any portion of the Work, the Contractor shall perform such Work in a good and workmanlike manner and in a manner of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 7.3.1.2 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer’s written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 7.3.2 CONTRACTOR’S STANDARD OF CARE

§ 7.3.2.1 The Contractor shall be responsible for the performance of the Work as an independent contractor and in a good and workmanlike manner (i) consistent with the Contract Documents; (ii) consistent with the instructions, guidance and direction of the Owner; (iii) consistent with the prevailing applicable professional and industry standards; (iv) consistent with sound practices; (v) as expeditiously as is consistent with such professional skill and care and the orderly progress of the Work and with the Contract Documents and the instructions, guidance and direction of the Owner; and (vi) in a manner that will not exceed the Contract Sum as it may be adjusted in accordance with the Contract Documents (the standards of this Section 7.3.2.1 shall be referred to herein as the “Contractor’s Standard of Care”).

The Contractor shall exercise the Contractor’s Standard of Care in performing all aspects of the Work. All references in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Contractor or reference to any similar term shall include the constructive knowledge, inference, reliance, awareness, determination, belief, observation, recognition attributed to the Contractor (“constructive knowledge”). Such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and recognition the Contractor would have obtained upon the exercise of the Contractor’s Standard of Care.

§ 7.3.2.2 The Contractor shall be responsible for the performance of the Work in accordance with the Contract Documents, all statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work, the Conditions (as defined hereinafter), and the Contractor’s Standard of Care. The Contractor shall obtain and post all necessary permits at the Project site.

§ 7.3.2.3 Notwithstanding anything to the contrary in this Agreement, the Contractor shall attend such meetings and site-visits, and make such submissions, as are necessary to comply with applicable law.

§ 7.3.2.5 Any information obtained by the Contractor from the Owner may not be used, published, distributed, sold or divulged by the Contractor, Subcontractors or Sub-subcontractors (as defined in Section 11.1 hereafter) for such party’s own purposes or for the benefit of any person, firm, corporation or other entity other than the Owner, without

the prior written consent of the Owner. Any information obtained by the Contractor, Subcontractors or Sub-subcontractors that is designated by the Owner in accordance with applicable law as confidential shall not be disclosed to any other parties without the prior written consent of the Owner.

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

§ 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 material and equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 Intentionally Omitted.

§ 7.6 Digital Data Use and Transmission

Intentionally Omitted.

§ 7.7 Building Information Models Use and Reliance

Intentionally Omitted.

§ 7.8 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.

§ 7.9 Notice

§ 7.9.1 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 as 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.)

« Notice by one party to the other by electronic transmission under this Section 7.9.1, shall be delivered by email to the email address for such other party set forth in Sections 19.4 and 19.5 of this Agreement, as applicable. »

§ 7.9.2 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.

§ 7.10 Relationship of the Parties

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.

§ 7.11 Compliance with Law/School Safety

§ 7.11.1 Contractor shall comply with all applicable laws including, without limitation, Connecticut General Statutes Section 10-222c, as applicable.

§ 7.11.2 Interaction with School Community. The scope of the Work does not, and will not under any circumstances, require any contact with students or any other minors physically present in the facilities of, or the grounds surrounding, the school where the Project is located (the "School Grounds"). None of the Contractor, Subcontractors, Sub-subcontractor, or any of their respective employees, agents or representatives shall, under any circumstances, converse or interact in any manner, with students or any minors physically present on the School Grounds. None of the Contractor, Subcontractors, Sub-subcontractor, or any of their respective employees, agents or representatives shall interact with any adult members of the school community (including, without limitation, employees, officials, or visitors, including parents of students enrolled in the Owner's schools) with respect to the Project with the exception of the Owner's Designated Representative as provided in the Contract. All of the Contractor, Subcontractors, Sub-subcontractors, and their respective employees, agents or representatives shall, while on the School Grounds, refrain from use of vulgar language, obscene gestures, or any other behavior inappropriate for a school environment and/or property on which minor children are or may be present.

§ 7.11.3 Background and Employment History Checks.

§ 7.11.3.1 To the extent permitted by law, the Contractor shall perform (or cause to be performed) as regards all of its employees, agents, and representatives (each, a "Contractor Employee"), and all of the employees, agents, and representatives of Subcontractors and Sub-subcontractors (each, a "Subcontractor Employee"), who will be physically present on the School Grounds in connection with the Project, appropriate background checks on all such Contractor Employees and Subcontractor Employees. Such background checks shall include, at a minimum and without limitation, a search of both the Connecticut Department of Emergency Services and Public Protection's sexual offender registry and the Abuse and Neglect Registry of the Connecticut Department of Children and Families. For those Contractor Employees and Subcontractor Employees who are to be physically present on the School Grounds in connection with the Project and whose current or most recent employment occurred out of state, the out-of-state equivalent of the Connecticut Department of Emergency Services and Public Protection's sexual offender registry and the Abuse and Neglect Registry of the Connecticut Department of Children and Families registry shall be checked. The Contractor shall complete (or cause to be completed) background checks as to each Contractor Employee and Subcontractor Employee prior to such Contractor Employee or Subcontractor Employee being permitted to be physically present on the School Grounds. If the Contractor receives any information indicating that any Contractor Employee or Subcontractor Employee may be registered as a sexual offender, may have a record of abuse or neglect, or is, in any other manner, unfit to perform services which could involve direct contact with minor children, or which may involve working in or near property on which minor children may be present, the Contractor shall immediately forward such information to the Owner, to the extent permitted by law, and shall immediately remove the individual from the School Grounds and from participation in the Project.

§ 7.11.3.2 Contractor represents and warrants that, in its best professional judgment, each Contractor Employee and each Subcontractor Employee maintains the appropriate qualifications and is fit to perform services which could involve direct contact with minor children, or which may involve working in or near property on which minor children may be present. The Contractor shall immediately remove any Contractor Employee or Subcontractor Employee from the School Grounds and from the Project if requested to do so by the Owner (which request shall be made in the Owner's sole discretion) or if it becomes known to the Contractor that such Contractor Employee or Subcontractor Employee may be a danger to the health, safety or well-being of the school community, its students, or any minor children.

§ 7.11.3.3 The Contractor shall include, and shall require all Subcontractors to include this Section 7.11 in all subcontracts for the Project.

§ 7.11.3.4 By execution of the Contract, the Contractor represents and warrants that it has fully complied with the requirements of this Section 7.11. To the extent permitted by law, the Contractor agrees that upon the Owner's request, Contractor shall promptly provide the Owner with any documentation related to such compliance,

including, without limitation, the results of the background and employment history checks required by this Section 7.11. Failure by the Contractor to comply with its obligations under this Section 7.11 shall constitute a material breach of the Contract.

§ 7.12 Nondiscrimination

The Owner prohibits harassment and discrimination on the basis of race, color, religious creed, age, marital status, military or veteran status, national origin, sex, ancestry, sexual orientation, or past or present physical or mental disability in accordance with Titles VI, VII of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1973; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1991; and applicable state laws.

No person shall be denied or subjected to discrimination on account of any services or activities resulting from this Contract on the grounds of sex, sexual orientation, gender identity or expression, race, color, creed, national origin, age (except minimum age and retirement provision), marital status, or the presence of any sensory, mental or physical handicap. Any violation of the provision shall be considered a violation of a material provision of this Contract and shall be grounds for cancellation, termination or suspension in whole or in part of the Contract by the Owner and may result in ineligibility for further contracts with the Owner. The Contractor shall at all times comply with all applicable municipal, state, and federal anti-discrimination laws, rules, regulations and requirements.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Intentionally Omitted.

§ 8.1.2 The Owner shall furnish such surveys as are required for the performance of the Work.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of such survey 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.

§ 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 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 (including, without limitation, attorney's fees) 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 ADDITIONAL RIGHTS

§ 8.4.1 The rights stated in this Article 8 shall be in addition to and not in limitation of any other rights of the Owner provided in the Contract Documents, or as may be available to the Owner at law or in equity.

§ 8.4.2 Any data provided by the Owner to the Contractor concerning the physical characteristics or measurements of the components that comprise the Project site; access to the Project site or staging and storing at the Project site; present obstructions and conditions of structures on or near the Project site; locations and depths of sewers, conduits, pipes, and gas lines on or near the Project site; positions of sidewalks, curbs and pavements on or near the Project site and other data concerning the conditions of the Project site and its surroundings, have been obtained from sources the Owner believes to be reliable. Accuracy of such data, however, is not guaranteed and is furnished solely for accommodation of the Contractor.

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. The provisions of this Section 9.1.1 shall not be construed to limit the investigative and review responsibilities of the Contractor under any other provisions 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 any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.2.1 The execution of the Contract shall constitute a representation that the Contractor has carefully reviewed the Contract Documents, and that the Contract Documents are sufficiently detailed and complete to permit the Contractor, (i) to complete the Project in an amount not in excess of the Contract Sum, except for additional costs incurred due to changes in the Work approved by the Owner; (ii) complete the Work within the Contract Time and in accordance with the Contract Documents and all applicable law which shall be inclusive of, without limitation, all statutes, ordinances, codes, rules and regulations and orders enacted, promulgated, issued or ordered by governmental body or public or quasi-public authority having jurisdiction over the Work, the Contractor, or the site of the Project. The Contractor is not required to ascertain that the Contract Documents are in accordance with all applicable law, but the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner may require.

§ 9.1.2.2 The execution of the Contract by the Contractor shall also constitute a certification by the Contractor that it has taken all steps necessary to ascertain the nature and location of the Work, and the general and reasonably observable conditions which can or may affect the Work and/or the cost thereof. Failure by the Contractor to fully acquaint itself with conditions which may affect the Work and/or the cost thereof, including, but not limited to, conditions relating to transportation, handling, storage of materials, availability of labor, water, other known projects in the region, applicable provisions of law, and the character and availability of equipment and facilities needed preliminary to and during the prosecution the Work, shall not relieve the Contractor of its responsibilities under the Contract Documents and shall not constitute a basis for extension of time or any increase in the Contract Sum. Owner assumes no responsibility for any representations concerning conditions made by any of its officers, or employees or representatives, prior to the execution of the Contract, unless such representations are expressly stated in the Contract Documents. The Contractor shall not perform any construction activity it knows constitutes a recognized error, inconsistency or omission. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without reporting the error, inconsistency or omission to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs of correction.

§ 9.1.2.3 If the Contractor fails to fulfill its obligations to report to the Owner under this Article 9, the Contractor shall be precluded from asserting any Claim which arises from, or relates to the circumstances that gave rise to the Contractor's obligation to make such report.

§ 9.1.2.4 The Owner assumes no contractual liability or responsibility for the physical condition or safety of the Project site or of any improvements thereon. Except as may be set forth in Section 16.2, the Contractor shall be solely responsible for providing safe conditions for the performance of the Work.

§ 9.1.2.5 If any governmental body having jurisdiction over the Work requires licenses or registrations for the performance of the Work or any part thereof, the Contractor shall hold such valid licenses or registrations as may be required by law to prosecute the Work to completion. If any part of the Work for which such a license or registration is required is to be performed by Subcontractors or Sub-subcontractors, the Contractor shall ensure that such Subcontractors or Sub-subcontractors hold such valid licenses or registrations as may be required by law to prosecute said Work to completion.

§ 9.1.2.6 The Contractor shall send a qualified representative to periodic progress meetings held at such time and at such place as the Owner or Architect shall designate and to such other meetings as are necessary to comply with the Conditions.

§ 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 expressly 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. To the extent applicable to the Project, the Contractor shall comply with Connecticut's prevailing wage laws.

§ 9.3.1.1 All labor shall be performed by workmen skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents and the Contractor's Standard of Care will be achieved. A list of all supervisory personnel, including the project manager and superintendent that the Contractor intends to use on the Project and an organizational chart reflecting the chain of command among such personnel, shall be submitted to the Owner for approval. The Contractor shall not engage supervisory personnel or utilize an organizational chain of command other than as approved by Owner in writing and shall not change such personnel or form of organization without the prior written approval of the Owner.

§ 9.3.1.2 To the extent required under Section 31-53 of the Connecticut General Statutes, the wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of Section 31-53 of the Connecticut General Statutes, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

§ 9.3.1.3 To the extent required under Section 31-53b of the Connecticut General Statutes, the Contractor shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on the Project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under section 31-53 on the Project, pursuant to the Contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 46 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268, and that any plumber or electrician subject to the continuing education requirements of section 20-334d, who has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration five or more years prior to the date such electrician or plumber begins work on the Project, has completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

§ 9.3.2 To the extent consistent with any provision regarding residence requirements contained in a collective bargaining agreement to which the Contractor is a party, in the employment of labor to perform the work specified herein, preference shall be given to citizens of the United States, who are, and continuously for at least three months prior to the date hereof have been, residents of the labor market area, as established by the Labor Commissioner, in which such work is to be done, and if no such qualified person is available, then to citizens who have continuously resided in the county in which the work is to be performed for at least three months prior to the date hereof, and then to citizens of the state who have continuously resided in the state at least three months prior to the date hereof.

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

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

§ 9.3.4.1 When two or more products are specified for an item of Work, any one thereof is acceptable and the choice is left to the Contractor, with prior written notice to the Owner and Architect. When only one product is specified and the term "or equal" is used in connection with the product, the Contractor may, if it so desires, offer a substitute product, and by so doing, Contractor shall be deemed to represent that the substitute product will completely accomplish the purpose of the Contract Documents. Requests for substitutions of products, materials or processes other than those specified shall be accompanied by evidence showing whether or not the proposed substitution:

- .1 is equal in quality and serviceability to the specified item;
- .2 will not entail changes in detail and construction of related Work;
- .3 will be acceptable in consideration of the required design and artistic effect; and
- .4 will not provide a cost disadvantage to the Owner.

The Contractor shall furnish with its request such Drawings, Specifications, samples, performance data and other information as may be required of it to assist the Owner in determining whether the proposed substitution is acceptable. The burden of proof of the facts above stated shall be upon the Contractor, and no substitution shall be authorized except upon the prior written approval of Owner. Nothing in this Section 9.3.4.1 shall limit the provisions of Sections 9.3.4.2 or 9.3.4.3.

§ 9.3.4.2 By making requests for substitutions based on Sections 9.3.4.1, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determines that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract, and waives all claims for additional costs related to substitution which subsequently become apparent; and
- .4 shall coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects.

§ 9.3.4.3 Approval by the Owner of any such substitution shall not relieve the Contractor of responsibility for any additional costs incurred by other trades for changes made necessary to accommodate the substitution.

§ 9.3.5 Directions, specifications and recommendations by manufacturers for installation, handling, storing, adjustment, and operation of their materials or equipment shall be complied with, but the Contractor shall nonetheless have the responsibility for determining whether such directions, specifications, and recommendations may safely and suitably be employed in the Work, and for notifying the Owner and Architect in advance of any deviation or modification necessary for installation safety or proper operation of the item.

§ 9.4 Warranty

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

§ 9.4.2 The Contractor shall procure and assign to the Owner at the time of Substantial Completion of the Work any and all Subcontractor, Sub-subcontractor, manufacturer and supplier warranties relating to any materials and labor used in, and equipment incorporated in, the Work which warranties shall supplement the warranties provided by the Contractor in Section 9.4.1.

§ 9.4.3 Substitutions not properly approved and authorized and work, materials or equipment which fail to perform under the proper use and normal wear for intended purposes shall be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 9.4.4 The warranties under this Section 9.4 shall be in addition to, and not a substitute for, any other rights of the Owner under the Contract Documents or existing in law or equity.

§ 9.4.5 The warranties set forth in this Section 9.4 shall survive final payment and termination of this Agreement.

§ 9.5 Taxes

The Owner is a tax-exempt entity. The Contractor shall be familiar with the current regulations of the Connecticut Department of Revenue Services and the sales or use tax on materials or supplies exempted by such regulations shall not be included as part of the bid or the Contract Sum. A sales tax certificate is available upon written request, as applicable.

§ 9.5.1 Nonresident Contractor. If the Contractor is an "nonresident contractor" as defined in Section 12-430(7)(A) of the Connecticut General Statutes, as revised, the Contractor shall provide evidence to the Owner prior to commencement of the Work that Contractor has complied fully with the provisions of Section 12-430(7). The Contractor is hereby notified that, if any subcontractor or supplier performing any part of the Work under the Contract Documents is a nonresident unverified contractor, the Contractor will withhold 5% of all payments to such subcontractor or supplier unless and until such subcontractor or supplier provides to the Contractor a Certificate of Compliance issued by the Connecticut Department of Revenue Services as defined in the Connecticut General Statutes §12-430(7). A nonresident unverified contractor is a contractor without an office in the State of Connecticut that is continuously maintained, occupied and used by the contractor's regular employees regularly in attendance to carry on the contractor's business in the contractor's own name and which contractor has not been verified pursuant to the requirements of the Connecticut Department of Revenue Services.

§ 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 perform the Work in accordance with and 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 and those relating to equal opportunity, labor, wages and employment. 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 provided that, if the Project is funded in whole or in part by the State of Connecticut, there shall be no allowances included in the Contract Sum. 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 prepare and submit for the Owner's and Architect's information and approval a construction schedule for the Work. Upon approval, such schedule shall be attached to this Agreement as Exhibit C. 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 (but shall not exceed the time limits current under the Contract Documents without the prior approval of the Owner and a Change Order to this Contract), 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 and approved by the Owner and Architect (such schedule as so approved, the "Construction Schedule").

§ 9.8.3 The construction schedule submitted under Section 9.8.1 shall be in such detail and include such content as required by the Architect and Owner. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and Architect of any delays or potential delays. The Contractor shall provide the Owner with weekly progress reports to reflect actual conditions ("Progress Reports") or at such other intervals as requested by the Owner. In the event any Progress Report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any Progress Report constitute an adjustment in the Contract Time or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 9.8.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right, but not the obligation, to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime; (2) supplying additional manpower, equipment, and facilities; and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purposes of ensuring the Contractor's compliance with the approved construction schedule as adjusted for time extensions granted pursuant to Section 14.5. Except as provided herein, the Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner pursuant to this Section 9.8.4. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 9.8.4 as frequently as the Owner deems necessary to ensure that that Contractor's performance of the Work will comply with the Substantial Completion Date, as the same may be extended by Change Order.

§ 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 Intentionally Omitted.

§ 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.

§ 9.10.1 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents and Contractor shall ensure that the site is maintained in safe condition. Contractor shall confine the use of the premises, for all purposes, to the areas occupied by the construction and related storage areas as and if shown. The Contractor shall provide all required temporary access walkways, both interior and exterior, temporary partitioning and the like necessary to complete the operations. The Contractor shall maintain unobstructed entrance to and/or exit from the present building complex. Contractor's work areas shall be kept clean each day of refuse including containers, cups and the like.

§ 9.10.2 The Contractor shall be responsible for erecting and maintaining temporary fencing and other appropriate barriers as necessary to protect the users and occupiers of the school facilities (buildings, grounds and athletic fields) including, without limitation, all students and staff.

§ 9.10.3 During the whole course of the Work, the Contractor shall conduct the Work so as to interfere with traffic near the site of the Work as little as possible and effect by every reasonable means the safety and comfort of pedestrians, vehicles and vehicle passengers near the site of the Work.

§ 9.10.4 All employees or persons entering upon the property surrounding the Work site are restricted to the immediate area of Work. Only persons having official business will be admitted to the construction site. The school buildings will only be accessed as necessary to perform the Work and the Contractor shall be responsible for monitoring that access.

§ 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. If Work is performed in an area of the Project site that is occupied or in use by or with the consent of the Owner, at the end of each day that Work is performed in such area, the Contractor shall leave such area in broom clean condition, remove waste materials, rubbish and the Contractor's tools, equipment, machinery and surplus materials.

§ 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or patent, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Town of Hebron, and their respective officials, officers, boards, committees, the 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, (including without limitation, attorneys' fees incurred in enforcing this section 9.15.1), 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 acts or omissions, breaches, errors, or other improper unauthorized and/or unlawful acts of the Contractor, a Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable. Such indemnity obligations shall not include liability for damage arising out of bodily injury to person or damage to property caused by or resulting from the negligence of the indemnitee seeking indemnification, such indemnitee's agents or employees. The obligations under this Section 9.15.1 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. The Contractor shall maintain, at the expense of the Contractor, appropriate insurance coverage to insure all of its responsibilities under 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, a Sub-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. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site and, unless otherwise expressly indicated, refers to subcontractors of all tiers performing any part of the Work (other than Subcontractors).

§ 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 or supplier 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 or supplier'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 any 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.

§ 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. If the Contractor claims that delay or additional cost is involved because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor, the Contractor shall make such claim as provided in Article 21.

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, 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. Any adjustments in the Contract Sum for such changes in the Work shall not include an amount of overhead and profit which exceeds the limitations set forth in Section 13.1.1 below.

§ 13.1.1 In the case of a change in the Work for which the Contractor is entitled to an adjustment in the Contract Sum under the terms and conditions of the Contract Documents, such adjustment shall be limited as follows:

- (i) Change Orders, in aggregate, shall not increase the Contract Sum by more than ten percent (10%);
- (ii) For that portion of the change in the Work that is self-performed by the Contractor, the Contractor's overhead and profit on such Work shall not exceed ten percent (10%) of the Contractor's direct costs incurred in the performance of such Work; and
- (iii) For that portion of the change in the Work that is performed by Subcontractors, the Contractor's markup on such subcontracted Work shall not exceed five percent (5%) of the amount invoiced to the Contractor by the Subcontractors for that Work and a Subcontractor's overhead and profit on its portion of the change in the Work shall not exceed ten percent (10%) of the Subcontractor's direct costs incurred in the performance of such Work. These limitations shall apply to both adds to and deductions from the Contract Sum.

§ 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 not to exceed the limitations set forth in §13.1.1 above, 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 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 Substantial Completion of the Work for each Field is achieved in accordance with Section 15.6.

§ 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; (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 may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 The Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy as may be required by the Owner. This schedule of values, upon the approval thereof by the Owner, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 15.1.2 Intentionally Omitted.

§ 15.2 Control Estimate

§ 15.2.1 Intentionally Omitted.

§ 15.2.2 Intentionally Omitted.

§ 15.2.3 Intentionally Omitted.

§ 15.2.4 Intentionally Omitted.

§ 15.2.5 Intentionally Omitted.

§ 15.3 Applications for Payment

§ 15.3.1 The Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values and the Contract Documents. The application shall be notarized, if required; be supported by all Supporting Documentation; and shall reflect retainage if provided for in the Contract Documents. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. All Applications for Payment shall be in the form, and contain the information and Supporting Documentation as required in this Section 15.3 and such additional information and documentation as may be reasonably requested by the Owner.

§ 15.3.2 Intentionally Omitted.

§ 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 Commencing with the second Application for Payment, and continuing with each Application for Payment submitted thereafter, the Contractor shall furnish to the Owner a properly executed form of release and waiver of claims/mechanics liens in a form acceptable to the Owner from the Contractor and each Subcontractor and material supplier whose Work was included on the previous Application for Payment for which payment by Owner was made to the Contractor.

§ 15.3.5 Applications for Payment, and invoices in support of the same, shall clearly distinguish between amounts charged for labor and amounts charged for materials.

§ 15.3.6 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. The Contractor further expressly undertakes to defend the Owner, at the Contractor's sole cost and expense, against any actions, lawsuits, or proceedings brought against Owner as a result of claims made or liens filed against the Work, the Project site and any improvements thereon (referred to collectively as "Liens" in this Section 15.3.8), by the Contractor, any Subcontractor, Sub-subcontractor or anyone claiming by, through or under them. The Contractor shall indemnify, defend and hold Owner harmless against any such claims, Liens and claims of Liens and agrees to pay any judgment or Lien resulting from any such actions, lawsuits or proceedings. The Contractor's obligations under this Section 15.3.8 are conditioned upon Owner having fulfilled its payment obligations to the Contractor with respect to the Work that is the subject of the claim, Lien or claim of Lien and for which indemnification is sought.

§ 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 approval of the Application 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 approval of an Application 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.

§ 15.4.3.1 The Owner shall not be deemed to be in default by reason of withholding payment while any of the grounds described in Section 15.4.3 remain uncured nor shall any interest accrue or be payable with respect to any payments so withheld.

§ 15.4.3.2 Unless otherwise required by the Owner, Certificates for Payment shall be on AIA documents G702 and G703.

§ 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 as required under Section 4.1.3.

§ 15.5.2 Neither the Owner nor Architect shall 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, any Sub-subcontractor or supplier. 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. The Contractor shall pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

§ 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. Substantial Completion shall not be deemed achieved until: (i) the Architect determines that substantial completion of the Work has been achieved; and (ii) the Owner's receipt of a final and unconditional Certificate of Occupancy from the Governmental Authorities that the Work has been completed in accordance with applicable law. For purposes of this Section 15.6 and Section 15.7 below, the procedures applicable to Substantial Completion, Final Completion and Final Payment shall apply separately to the Work relating to the Competition Field and the North 316 Field.

§ 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 a comprehensive list of items to be completed or corrected prior to final payment (the "Punchlist"). Failure to include an item on the Punchlist 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 Punchlist, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect 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 Punchlist to achieve final completion of the Work. 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 Intentionally Omitted

§ 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 will promptly make such inspection and, when the Architect determines that final completion of the Work under the Contract Documents has been achieved and the Contract fully performed including, without limitation, the satisfactory completion of the all items on the Punchlist, the Architect will promptly notify the Contractor of such determination and 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 thirty (30) days after Owner's receipt of the Architect's final Certificate for Payment and Supporting Documentation from the Contractor. Supporting Documentation shall include, without limitation, a complete releases and waiver of claims/mechanic's liens arising out of this Contract subject only to receipt of final payment which reflect that the Contractor has met all of its obligations to make payments to others hereunder except for those to be paid with the proceeds of final payment. If any such claims/liens remain unsatisfied after final payment is made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claims/liens, including costs and reasonable attorneys' fees.

§ 15.7.3 Intentionally Omitted.

§ 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.

§ 15.7.5 ACCESS TO BOOKS AND RECORDS AND AUDITS

Upon forty-eight (48) hours prior notice to the Contractor, the Owner shall have the right to inspect and copy the books and records of the Contractor to verify work performed, payments made or unmade, amounts claimed, obligations owed and any other documentation related to the Project or this Contract. The Contractor shall comply, and shall cause Subcontractors and Sub-subcontractors to comply, with all accounting procedures and record retention policies reasonably requested by the Owner. The Contractor shall retain its records for six (6) years after Final Completion of the Work is achieved unless otherwise agreed by the Owner. Upon request of the Owner, the Contractor will cooperate, and secure the cooperation of all Subcontractors and Sub-subcontractors, and assist the Owner during any audit of the Project conducted by the Owner at any time after Substantial Completion. Such cooperation shall include providing the Owner with access to all records related to the Project.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

§ 16.1.1 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, at its sole costs and expense, 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, except 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 separate from, in addition to, and are not to be considered a part of the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, whether naturally occurring or manmade, that is hazardous, toxic, or words of similar import or regulatory effect, and any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls (collectively, "Hazardous Materials"). If the Contractor believes its Work will disturb or otherwise implicate any actual or suspected Hazardous Material or encounters a Hazardous Material not addressed in the Contract Documents, the Contractor shall not disturb any such Hazardous Material, immediately report the condition to the Owner in writing and take all necessary precautions to prevent release of and exposure to the Hazardous Materials and foreseeable bodily injury or death to persons resulting from such Hazardous Material. If such reasonable precautions will be inadequate to prevent release of and exposure to Hazardous Materials, or foreseeable bodily injury and death, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area. When the Hazardous Material has been rendered harmless and/or otherwise abated in accordance with all applicable law, 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 except to the extent that the Hazardous Material was first encountered due to the negligence, willful or intentional misconduct, or breach of contract by the Contractor, Subcontractor, Sub-subcontractor or any person or entity for whom or which any of them is responsible.

§ 16.2.2 In no event shall the Owner have any responsibility for any substance or material (including, but not limited to, any Hazardous Material) that is brought to the Project site by the Contractor, any Subcontractor or any materialman or supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are Hazardous Materials or comprised of any items that are Hazardous Materials.

§ 16.2.3 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, the Town of Hebron, and their respective officials, officers, boards, committees, agents and employees against claims, damages, losses and expenses, including but not limited to attorney's fees, resulting from any Hazardous Materials or substance which the Contractor, or any Subcontractor, Sub-subcontractor, supplier or any other person or entity for whom or which any of them is responsible, brings to the site and improperly handles or from the Contractor's failure to perform its obligations under Section 16.2.1, provided that such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property or violation of a applicable law and except to the extent that such damage, loss or expense was caused by or results from the negligence of the indemnitee.

§ 16.2.4 The Contractor shall perform all required procedures necessary to insure that there will be no actual or threatened release, discharge, spillage, uncontrolled loss, seepage or filtration (each a "Release") of any Hazardous Materials on the site caused by its operations. The Contractor is responsible for any and all costs and liabilities associated with the investigation and remediation of any such Release, or as required by regulating authorities having jurisdiction under applicable law, and holds the Owner, its employees and agents, and the fee owner of the Project site (if other than the Owner), harmless against any current or future liabilities resulting from such incidents.

§ 16.2.5 All material and equipment furnished under the Contract Documents shall be free of asbestos, lead based paint, and PCBs. Unless otherwise specified in the Contract Documents, any material or equipment containing these, and any other Hazardous Materials shall be considered defective and shall be removed by the Contractor at the Contractor's sole expense.

§ 16.2.3 Intentionally Omitted

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 satisfactory to the Owner and 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 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than «One Million Dollars » (\$ «1,000,000 ») each occurrence, «Three Million Dollars » (\$ «3,000,000 ») general aggregate, and «Three Million Dollars » (\$ «3,000,000 ») 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.

§ 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 ») 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 «One Million Dollars » (\$ «1,000,000 ») each accident, «One Million Dollars » (\$ «1,000,000 ») each employee, and «One Million Dollars » (\$ «1,000,000 ») 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 «Two Million Dollars » (\$ «2,000,000 ») per claim and «Two Million Dollars » (\$ «2,000,000 ») 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 an additional insured on the Contractor's Commercial General Liability, Automobile Liability, Worker's Compensation/Employer's Liability and excess or umbrella liability 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 Town of Hebron, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and the Town of Hebron as 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

Umbrella/Excess

Limits

At least One Million Dollars (\$1,000,000) in excess of the policy limits stated above for the Commercial General Liability, Automobile Liability and Employer Liability coverages.

§ 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 (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 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 to the Owner (i) a labor and material payment bond equal to one hundred percent (100%) of the Contract Sum and otherwise in accordance with the requirements of Connecticut law; and (ii) a bond covering the Contractor's faithful performance of all of its obligations under the Contract Documents, in each case such bonds will be issued by a surety satisfactory to the Owner and shall reflect the Owner as the obligee. The Contractor shall deliver the executed, approved bonds to the Owner no later than three (3) business days after execution of this Contract unless otherwise required by the Owner but in any event prior to commencement of the Work. The bonds must be issued by a surety rated A minus or better by A.M. Best and listed on the U.S. Department of Treasury's Listing of Approved Sureties. The bonds must be submitted to Eva Gallupe, Business Manager, 85 Wall Street Hebron, CT 06248 at eva.gallupe@rhamschools.org.

Bonds shall be issued on the AIA Document 312 forms, shall be dated the same date as this Agreement, and shall name the Owner as the obligee. 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 power of attorney.

The Bonds shall contain the following provision: "In the event that the surety assumes the contract or obtains a bid or bids for completion of the contract, the surety shall ensure that the contractor chosen to complete the contract is prequalified pursuant to section 4a-100 of the Connecticut general statutes in the requisite classification and has the aggregate work capacity rating and single project limit necessary to complete the contract".

Performance and Labor and Material Payment Bonds will be required from all subcontractors, except that in accordance with Connecticut General Statutes Sections 49-41, et. seq., the following restrictions apply:

1. A Payment Bond shall not be required to be furnished in relation to any sub-bid in which the total estimated cost of labor and materials under the contract with respect to which such sub-bid is submitted is less than One Hundred Thousand Dollars (\$100,000.00).
2. A Performance Bond shall not be required to be furnished in relation to any sub-bid in which the total estimated cost of labor and materials under the contract with respect to which such sub-bid is submitted is less than Fifty Thousand Dollars (\$50,000.00).

§ 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 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.

§ 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.

§ 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 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 State of Connecticut, excluding Connecticut's choice of law rules.

§ 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 timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. If the inspections and tests conducted under this Section 19.3 reveal failure in a portion of the Work, the Owner may order the inspection and testing, at the Contractor's expense, of any and all portions of the Work that are identical or similar to the failing portion.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

«Colin McNamara, Superintendent of Schools »
«85 Wall Street »
«Hebron, CT 06248 »
«Tel: 860-228-2115 »
«Email: superintendent@rhamsschools.org »
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§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

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§ 19.6 The Contractor's representative shall be changed without ten days' prior notice to the Owner.

§ 19.7 The Contractor hereby represents and warrants (in addition to other representations and warranties contained in the Contract Documents), as an inducement to the Owner to enter into the Contract, which representations and warranties shall survive the final completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it, through its Subcontractors or otherwise, is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder in a timely manner and has sufficient experience and competence to do so;
- .3 the Contractor is authorized to do business in the State of Connecticut and is properly licensed by all necessary governmental authorities having jurisdiction over the Contractor and the Project; and
- .4 the Contractor has visited the site of the Project and become familiar with the condition of the site and the Contract Documents, and knows of no reason why the Work cannot be performed as set forth in, and in the timeframe required by, the Contract Documents.

§ 19.8 Execution in Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument. Signed copies of this Agreement may be faxed and e-mailed with the same force and effect as if the originally executed Agreement had been delivered.

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 on that executed Work, and direct costs incurred by reason of such termination.

§ 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.
- .5 institutes proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or similar or applicable federal or state law, or a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or the Contractor admits in writing its inability to pay its debts as they become due, or it makes a general assignment for the benefit of its creditors, or a receiver, liquidator, trustee, or assignee is appointed, or a receiver of all or any substantial portion of the Contractor's properties is appointed;
- .6 abandons the Work;
- .7 submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or
- .8 if a mechanics or materialman's lien or notice of lien is filed against any part of the Work or the Project site and the Contractor has failed to comply with its obligations under Section 9.15.3.

§ 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 obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time and without prejudice and without waiving any other right or remedy the Owner may have, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed, including reasonable overhead and profit on that executed Work, and direct costs incurred by reason of such termination, including costs attributable to termination of Subcontracts.

§ 20.4 Payment Upon Termination

§ 20.4.1 Except for claims for such payments as the Owner is explicitly required to make upon termination pursuant to this Article 20, the Contractor hereby waives and forfeits all claims for payment and damages, including without limitation, anticipated profits.

§ 20.4.2 When making any payment upon termination required under this Article 20, the Owner shall be credited for (1) payment previously made to the Contractor for the terminated portion of the Work, (2) valid claims which the Owner has against the Contractor under the Contract Documents, and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that were included in the Contract Sum.

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 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. 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.

OWNER *(Signature)*

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(Printed name and title)

CONTRACTOR *(Signature)*

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(Printed name and title)

