

## CONTRACTOR AGREEMENT

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, between the Port Jervis Free Library, 138 Pike Street, Port Jervis, New York 12771 ("Owner") and \_\_\_\_\_ ("Contractor") as follows:

### ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 Contractor shall complete the Work described in the Contract Documents. The Contract Documents consist of:

- this Agreement signed by Owner and Contractor;
- the drawings and specifications dated \_\_\_\_\_; and
- \_\_\_\_\_.

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 Subject to written agreement signed by both Owner and Contractor, Contractor shall achieve Substantial Completion, as defined in Section 11.5, of the entire Work on or before \_\_\_\_\_.

### ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 9, the Contract Sum is: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

### ARTICLE 4 PAYMENTS

§ 4.1 Owner shall pay Contractor, in accordance with Article 11, as follows:

- \_\_\_\_\_ % upon execution of the Contract Documents;
- \_\_\_\_\_ % due upon \_\_\_\_\_ % Substantial Completion of Work; and
- \_\_\_\_\_ % due upon Final Completion of Work.

### ARTICLE 5 INSURANCE

§ 5.1 Contractor and all subcontractors shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 13.2, issued by a reputable insurance company authorized to do business in the State of New York, reasonably acceptable to Owner, in standard form, subject only to those exclusions or other terms as approved by Owner.

§ 5.1.1 Commercial General Liability insurance for the Work, written on an occurrence form, with policy limits of not less than (\$ \_\_\_\_\_) per each occurrence, (\$ \_\_\_\_\_) general aggregate, and (\$ \_\_\_\_\_) aggregate for products-completed operations hazard.

§ 5.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by Contractor, with policy limits of not less than (\$ \_\_\_\_\_) 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.

§ 5.1.3 The required limits and coverage for Commercial General Liability and Automobile Liability may be achieved through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2 and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers' Compensation at statutory limits.

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

§ 5.1.6 Builder's risk insurance to cover the total value of the entire Work on a replacement cost basis.

§ 5.1.7 Other Insurance to be provided:\_\_\_\_\_.

§ 5.1.8 Prior to commencement of the Work, Contractor and all subcontractors shall provide certificates of insurance evidencing its coverages and naming the Owner as an additional insured on such policies and shall provide thirty (30) days' notice of prior to cancellation to Owner.

§ 5.1.9 Contractor and all subcontractors waive all rights against Owner and any of its other contractors, subcontractors, suppliers, agents, and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by insurance, except such rights as they have to the proceeds of such insurance.

## **ARTICLE 6 GENERAL PROVISIONS**

§ 6.1 The Contract Documents represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by a written modification signed by both parties.

§ 6.2 The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by Contractor to fulfill Contractor's obligations.

§ 6.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one document shall be as binding as if required by all.

§ 6.4 Written notice under this Agreement may be given by one party to the other by email to \_\_\_\_\_ as set forth below, with a copy sent by certified mail.

## **ARTICLE 7 OWNER**

§ 7.1 Owner's Right to Stop the Work. If Contractor fails to correct Work which is not in accordance with the Contract Documents, Owner may direct Contractor in writing to stop the Work until the correction is made.

§ 7.2 Owner's Right to Carry Out the Work. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails, within a seven day period after receipt of written notice from Owner, to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies, correct such deficiencies. In such case, Owner may withhold payment in whole or in part, to the extent reasonably necessary to reimburse Owner for the cost of correction.

## **ARTICLE 8 CONTRACTOR**

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

§ 8.1.2 Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. Before commencing activities, Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to

Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to Owner.

#### § 8.2 Contractor's Construction Schedule

Contractor shall promptly prepare and submit for Owner's information a Contractor's construction schedule for the Work.

#### § 8.3 Supervision and Construction Procedures

§ 8.3.1 Contractor shall supervise and direct the Work using Contractor's best skill and attention. 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.

§ 8.3.2 Contractor shall promptly furnish in writing to Owner, the names of subcontractors or suppliers for each portion of the Work. Contractor shall not contract with any subcontractor or supplier to whom Owner has made a reasonable objection.

#### § 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

#### § 8.5 Warranty

Contractor warrants to Owner that: (1) materials and equipment furnished under the Contract Documents will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of Owner, or shall be transferable to Owner, and shall commence in accordance with Section 11.5.

#### § 8.6 Taxes

Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract Documents are executed.

#### § 8.7 Permits, Fees and Notices

§ 8.7.1 Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Contractor shall assume full responsibility for such Work and shall bear the attributable costs. Contractor shall promptly notify Owner in writing of any known inconsistencies in Contract Documents with such governmental laws, rules, and regulations.

#### § 8.8 Submittals

Contractor shall promptly review, approve in writing, and submit to Owner shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

#### § 8.9 Use of Site

Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and Owner.

#### § 8.10 Cutting and Patching

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

#### § 8.11 Cleaning Up

Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

#### § 8.12 Indemnification

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner, and Owner's principals, officers, directors, consultants, agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, to the extent caused by the acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

### ARTICLE 9 CHANGES IN THE WORK

§ 9.1 Owner, without invalidating the Contract Documents, may order changes in the Work within the general scope of the Contract Documents, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If Owner and Contractor cannot agree to a change in the Contract Sum, Owner shall pay Contractor its actual cost plus reasonable overhead and profit.

### ARTICLE 10 TIME

§ 10.1 Time limits stated in the Contract Documents are of the essence of the Contract Documents.

§ 10.2 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the Contractor.

#### § 10.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 11.5, of the entire Work:

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

☐ Not later than (        ) calendar days from the date of commencement.

☐ By the following date:

### ARTICLE 11 PAYMENTS AND COMPLETION

#### § 11.1 Contract Sum

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

## § 11.2 Applications for Payment

§ 11.2.1 At least ten (10) days before the date established for each progress payment, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the values stated herein, supported by data substantiating Contractor's right to payment as Owner may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. 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 Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off site at a location agreed upon in writing.

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

## § 11.3 Payment

Owner will, within seven (7) days after receipt of Contractor's Application for Payment, either (1) issue payment to Contractor for the full amount of the Application for Payment; or (2) issue to Contractor payment for such amount as Owner determines is properly due, and notify Contractor in writing of Owner's reasons for withholding other payment in whole or in part.

## § 11.4 Progress Payments

§ 11.4.1 Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 11.4.2 Owner shall have no responsibility for payments to a subcontractor or supplier.

§ 11.4.3 A progress payment, or partial or entire use or occupancy by Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

## § 11.5 Substantial Completion

§ 11.5.1 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 Owner can occupy or utilize the Work for its intended use.

§ 11.5.2 When Contractor believes that the Work or designated portion thereof is substantially complete, it will notify Owner and Owner, and/or its designated agent, will inspect the Work to determine whether the Work is substantially complete. When Owner determines that the Work is substantially complete, Owner shall fix the time within which Contractor shall finish all remaining items. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof.

## § 11.6 Final Completion and Final Payment

§ 11.6.1 Upon receipt of a final Application for Payment, Owner and/or its agent will inspect the Work.

§ 11.6.2 Final payment shall not become due until (i) Owner determines that the Work is finally complete, and (ii) Contractor submits to Owner releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract Documents.

§ 11.6.3 Acceptance of final payment by 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 final Application for Payment.

## **ARTICLE 12 PROTECTION OF PERSONS AND PROPERTY**

§12.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract Documents. Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the site and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, or by anyone for whose acts Contractor may be liable.

## **ARTICLE 13 CORRECTION OF WORK**

§ 13.1 Contractor shall promptly correct Work rejected by Owner as failing to conform to the requirements of the Contract Documents. Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 13.2 In addition to Contractor's other obligations including warranties under the Contract Documents, Contractor shall, for a period of one (1) year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 13.3 If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it in accordance with Article 7.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

§ 14.1 Assignment of Contract. Neither party to the Contract Documents shall assign the Contract Documents without the written consent of the other party.

§ 14.2 Governing Law and Jurisdiction. To the extent any reference to state law is required, this Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without giving effect to any choice or conflict of laws. Each party to this Agreement hereby consents to the exclusive jurisdiction of the Supreme Court of the State of New York, Orange County, or the federal courts encompassing the State of New York, Orange County, and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement or the transactions contemplated hereby (whether such actions or proceedings are based in statute, tort, contract or otherwise), shall be litigated in such court.

**§ 14.3 JURY TRIAL WAIVER. BOTH PARTIES IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF OWNER AND CONTRACTOR, THE ENFORCEMENT OF THIS AGREEMENT, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN OWNER AND CONTRACTOR, OR ANY ACTIONS OR OMISSIONS OF EITHER PARTY IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR OTHERWISE.**

§14.4 Counterparts/Telecopy. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or PDF shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties

transmitted by facsimile, PDF or similar electronic transmission shall be deemed to be their original signatures for all purposes.

§14.5 No Third Party Beneficiaries. No provision of this Agreement shall create any third-party beneficiary or other rights in any person who is not a Party to this Agreement, unless expressly provided.

§14.6 Severability. If any provision hereof shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and the validity of the remaining portions or provisions of this Agreement shall not be affected thereby.

§14.7 Waiver. The failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof by such party.

## **ARTICLE 15 TERMINATION OF THE CONTRACT**

§ 15.1.1 Owner may terminate the Contract Documents if Contractor:

- refuses or fails to supply enough properly skilled workers or proper materials;
- fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Contractor and the subcontractors;
- refuses or fails to complete or correct the Work;
- disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- otherwise materially breaches any terms or conditions of the Contract Documents.

§ 15.1.2 When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner, and after giving Contractor and Contractor's surety, if any, seven (7) days' written notice, terminate employment of Contractor and may:

- take possession of the site and of all materials thereon owned by Contractor, and
- finish the Work by whatever reasonable method Owner may deem expedient.

§ 15.1.3 When Owner terminates the Contract Documents for one of the reasons stated in Section 15.1.1, Contractor shall not be entitled to receive further payment until the Work is finished.

§ 15.1.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. This obligation for payment shall survive termination of the Contract Documents.

### **§ 15.2 Termination by Owner for Convenience**

Owner may, at any time, terminate the Contract Documents for Owner's convenience and without cause. Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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

\_\_\_\_\_  
OWNER (Signature)

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

Title: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR (Signature)

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

Title: \_\_\_\_\_

Email: \_\_\_\_\_

