

## **ARTICLE 1 GENERAL PROVISIONS**

### **§1.1 DEFINITIONS**

The definitions set forth below are applicable throughout the Contract Documents unless otherwise specifically defined.

**§1.1.1** "Addendum" or "Addenda" means the modifications and clarifications to the Request for Bid or, after award of Contract, modifications and clarifications to the Contract Documents.

**§1.1.2** "Agreement" means the Agreement between Owner-Contractor.

**§1.1.3** "Approved": means when used in conjunction with the Architect's action on Contractor's submittals, applications, and requests, is limited to the Architect's duties and responsibilities as stated in the General Conditions.

**§1.1.4** "Architect" means the entity identified as the "Architect" in Division 01 Section 011000 – Summary of Work.

**§1.1.5** "Authorities Having Jurisdiction" means an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation or procedure.

**§1.1.6** "Business Day" means a Calendar Day excluding weekends and holidays (as defined for each trade in the Prevailing Wage Schedule).

**§1.1.7** "Calendar Day" or "Day" means all days including weekends and holidays.

**§1.1.8** "Construction Manager" means the entity identified as the "Construction Manager" in Division 00, Section 007000 General Conditions.

**§1.1.9** "Contractor" means the entity holding an Agreement between Owner and Contractor with the Owner for this Project.

**§1.1.10** "Contract" means the Contract Documents. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and a Contractor or a Subcontractor of any tier, (2) between the Construction Manager and a Contractor or a Subcontractor of any tier (3) between the Owner and a Subcontractor of any tier or (4) between any persons or entities other than the Owner and Contractor. The Architect and Construction Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's and Construction Manager's duties.

**§1.1.11** "Contract Documents" consist of the Agreement between Owner and Contractor; all documents in the Request for Bid (RFB-OC095-21) including, but not limited to, all Drawings and Specifications; the Contractor's Bid, Addenda issued prior to execution of the Contract; other documents listed in the foregoing documents (unless otherwise excluded); and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Shop Drawings and Submittals are not Contract Documents.

**§1.1.12** "Contract Sum" means the total not-to-exceed cost specified in the Contract Documents.

**§1.1.13** "Contract Time" means the time period, including authorized adjustments, from the Effective Date of Contract through the time allotted in the Contract Documents for Final Completion of the Work.

**§1.1.14** Not used.

**§1.1.15** "County" means the County of Orange. County is also the Owner and the terms "Owner" and "County" are interchangeable.

**§1.1.16** "DASNY" means the Dormitory of the State of New York.

**§1.1.17** "Day" means calendar day, including weekends and holidays, unless otherwise specified in the Contract Documents.

**§1.1.18** The words "directed," "requested," "authorized," "selected," "approved," "required," "permitted" and similar phrases mean directed by the Architect, requested by the Architect, etc..

**§1.1.19** "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Drawings do not include Shop Drawings.

**§1.1.20** The word "experienced" means, when used with the term "installer," to have successfully completed a minimum of five previous projects similar in size and scope to this Project; being familiar with the special requirements indicated; and having complied with requirements of authorities having jurisdiction.

**§1.1.21** "Extra Work" means Work authorized by the Owner other than that required by the Contract at the time of award.

**§1.1.22** "Final Completion" means the stage defined in §9.10 of the General Conditions and the date of issuance of the final payment to Contractor.

**§1.1.23** The word "furnish" means to supply and deliver to the Project site, ready for unloading, unpacking, assembly, installation, and similar operations.

**§1.1.24** "HHAC" means the New York State Homeless Housing and Assistance Corporation which is funding this project in part. (See Attachment A to the Agreement for the HHAC Agreement between Owner and HHAC.)

**§1.1.25** The word "indicated" means reference to graphic representations, notes, or schedules on the Drawings; or to other paragraphs or schedules in the Specifications and similar requirements in the Contract Documents. Terms such as "shown," "noted," "scheduled," and "specified" are used to help the user locate the reference. Location is not limited.

**§1.1.26** The word "install" means operations at the Project site including the actual unloading, temporary storage, unpacking, assembling, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.

**§1.1.27** "Installer" means the Contractor, or another entity engaged by the Contractor, either as an employee, subcontractor, or contractor of lower tier, to perform a particular construction activity, including installation, erection, application, or similar operations. Installers are required to be experienced in the operations they are engaged to perform.

**§1.1.28** "Law or Laws" means applicable federal, state and local constitutions, statutes, ordinances, codes, regulations, common law and lawful orders issued by Authorities Having Jurisdiction, permits, as well as rules, conventions, and agreements within the construction industry that control performance of the Work.

**§1.1.29** The phrases "means and methods of construction" or "construction means, methods, techniques, sequences and/or procedures" mean the labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Contract.

**§1.1.30** The phrase "other contractor(s)" shall mean any Contractor (other than the entity that executed this Contract or its Subcontractors or Suppliers) who has a contract with the Owner related to this Project.

**§1.1.31** "Owner" means the entity designated as "Owner" in Division 01 Section 011000 – Summary of Work. Owner is also the County, and the terms Owner and County are interchangeable.

**§1.1.32** "Project" means the Project Identifications provided in Division 01 Section 011000 – Summary of Work.

**§1.1.33** "Project Site" means the space available to the Contractor for performing construction activities, either exclusively or in conjunction with others performing other work as part of the Project. The extent of the Project site is shown on the Drawings and may or may not be identical with the description of the land on which the Project is to be built.

**§1.1.34** The word "provide", with respect to constructed items, equipment and materials, means completely furnish and install.

**§1.1.35** "Punch List" shall mean a list, issued pursuant to §9.8.2 of the General Conditions.

**§1.1.36** "Site" means the "Project Location" provided in Division 01 Section 011000 - Summary of Work.

**§1.1.37** "Specifications" mean that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§1.1.38** "Subcontractor" means subcontractors, of every tier, performing Work which is the responsibility of Contractor.

**§1.1.39** "Substantial Completion" shall be the stage defined in §9.8 of the General Conditions and the date defined in Article 8.1.3 of the General Conditions.

**§1.1.40** "Supplier" means entities, of every tier, supplying materials or services to Contractor to complete its Work for this Project.

**§1.1.41** "Testing Agency" means a testing agency which is an independent entity engaged to perform specific inspections or tests, either at the Project site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.

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

## **§1.2 EXECUTION, CORRELATION AND INTENT**

**§1.2.1** The Contract Documents shall be signed by the Owner and the Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Construction Manager shall identify such unsigned Documents upon request.

**§1.2.2** Execution of the Contract by the Contractor is a representation that the 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.

**§1.2.3** 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, if Work is shown only on one but not on the other, the Contractor shall perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**§1.2.4** Organization of the Specifications into Divisions, Sections and Articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§1.2.5** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## **§1.3 RULES OF INTERPRETATION AND ORDER OF PRECEDENCE**

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

**§1.3.2** The following rules of interpretation apply to this Contract and shall take priority over the Order of Precedence rule set forth in §1.3.2.5 below. If application of any of these rules of interpretation resolves the inconsistency, ambiguity, or discrepancy, it shall not be necessary to apply the Order of Precedence rule:

**.1** When one portion of the Contract Documents places upon the Contractor more detailed or more stringent requirements than another portion of the Contract Documents, the more detailed and more stringent requirement applies. If there is any disagreement as to which requirement is more detailed or more stringent, the requirement that is costs more to perform shall be required unless agreed otherwise between the parties.

**.2** In instances where materials and installation techniques or requirements are introduced by a Contractor's Submittal that is accepted by the Owner, if there are differences between or among the Contract, the manufacturer's written requirements, the Submittals, and relevant code and standards, the most stringent requirements shall apply. The Contractor shall perform the Work in accordance with the most stringent requirements at no increase to the Contract Sum or change to Contract Time.

**.3** In the event of a discrepancy between a Drawing and figures written thereon, the figures govern over the scaled dimensions unless they are obviously incorrect.

**.4** Anything mentioned in the Specifications and not shown in the Drawings or shown in the Drawings and not mentioned in the Specifications, shall be of like effect as if shown in or mentioned in both. Anything addressed in a Drawing or Drawings of one trade discipline and not addressed in a Drawing or Drawings of another trade discipline shall be of like effect as if shown or mentioned in both.

**.5** All Contract Documents and subsequently issued Modifications are essential parts of this Contract. A requirement included in one is binding as if included in all. Except as stated below, the following Order of Precedence shall be used to resolve any inconsistencies, conflicts, discrepancies, error, or omissions between or among the documents comprising the Contract, first taking precedence:

- .1** HHAC Agreement (Attachment A)
- .2** M/WBE requirements (Attachment B).
- .3** Most recent Modifications, Addenda, or Change Orders to the Agreement
- .4** Agreement
- .5** RFB-DPW##-20## for Alternations to Building #51 Emergency Housing Shelter (Attachment C)
- .6** Signed and Completed Bid Proposal (Attachment D), including all statements, warranties, and representations made by the Contractor in connection with its bid submission or in substantiating its financial status or professional capabilities.
- .7** Schedule of Values submitted by the Contractor during the Project
- .8** Letter of Credit or Payment and Performance Bonds for 100% of the Contract Sum
- .9** Certificates of Insurance to be submitted in forms and amounts approved by the Owner
- .10** Construction schedule to be submitted by the Contractor prior to the first application for payment.

**.6** Reports and documents listed in Contract Documents as "Reference Documents" are not part of the Contract. The Contractor acknowledges that it has read and has knowledge of the Reference Documents' content and the Contractor is deemed to have knowledge of such content. If a document that is not otherwise identified as a "Reference Document" is expressly identified in the Contract as "incorporated by reference" or "attached and incorporated" it is a Contract document rather than a "Reference Document." Documents and standards identified in this Contract as a Contract Document, whether included in the Contract or expressly incorporated by reference, are Contract Documents whether or not a full copy of the document is included as part of the Contract. Such incorporated Contract Documents shall have the priority of the documents they are identified to be.

**.7** In the event of any other discrepancy or ambiguity or if design or material requirements are not clearly defined, the Contractor shall promptly submit the issue to the Owner for a written determination. Any action taken by the Contractor before the Owner issues its determination shall be at the Contractor's own risk and expense.

**.8** The Contractor shall not take advantage of any patent or apparent error, omissions, or ambiguity in the Contract Documents. With respect to any patent or apparent error, omission, or ambiguity, the Contractor has a duty to inquire prior to submitting its Bid. If the Contractor fails to do so, the Owner's interpretation shall prevail.

**.9** If the Contractor discovers an error, omission, or that additional information is needed to execute the Work, the Contractor shall immediately notify the Owner. The Owner will then make the corrections or interpretations it deems necessary to fulfill the intent of the Contract and shall provide those corrections or interpretations to the Contractor. The Contractor shall provide all labor, materials, tools, and equipment needed to complete the specified Work. Where additional details, clarifications, or both are needed to complete the specified Work, the Contractor shall comply with the details and clarifications provided by the Owner and the cost of compliance shall be deemed included in the Contract Sum.

**§1.3.7** Organization of the Specifications into Divisions, Sections and Articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§1.3.8** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

#### **§1.4 CAPITALIZATION**

**§1.4.1** Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other Contract Documents.

#### **§1.5 INSTRUMENTS OF SERVICE**

**§1.5.1** The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architects consultants are Instruments of Service and the property of the Owner and through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Instruments of Service and, unless otherwise indicated, the Owner will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for by the Architect, on request, upon completion of the Work.

**§1.5.2** The Instruments of Service are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

**§1.5.3** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Instruments of Service appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of copyrights or other reserved rights.

**§1.5.4** All Drawings and Specifications, Shop Drawings, Product Data and Samples, computations, sketches, test data, survey results, photographs, renderings, models and other materials prepared by Contractor or any of its Subcontractors or their consultants shall be the property of the Owner and available to the Owner for its exclusive use and reuse at any time without further compensation to Contractor or Subcontractor and without any restrictions on such use and reuse.

#### **§1.6 Homeless Housing and Assistance Corporation Agreement**

**§1.6.1** All or part of the Work to be performed under this Contract is to be paid for with funds provided by the State of New York pursuant to an agreement (hereinafter referred to as the "HHAC

Agreement") between the Owner and the New York State Homeless Housing and Assistance Corporation (hereinafter referred to as the "HHAC"). The provisions of the HHAC Agreement as they relate to the work under this Contract include the following:

- .1 The Owner is responsible for development of the project premises in conformance with the budget and description of the work to be undertaken in the HHAC Agreement and with the terms of that agreement.
- .2 The HHAC Agreement establishes a fixed dollar amount, which the HHAC will make available to the Owner, subject to the availability of State funds, for the work to be undertaken by the Owner pursuant to the HHAC Agreement. In the event that the Owner's costs increase, the HHAC has no obligation to agree to an amendment of the HHAC Agreement or to increase the amount of money that it makes available to the Owner.
- .3 Contracts that the Owner enters into relating to the work to be undertaken pursuant to the HHAC Agreement are subject to the HHAC's prior approval, and must contain provisions allowing the HHAC, at its option, to require the assignment by the Owner of its rights in such contracts to the HHAC.
- .4 Except in the event that the HHAC exercises its option to require the Owner to assign the Contract to the HHAC, nothing in any contract or agreement which the Owner enters into in discharging its obligation under the HHAC Agreement may either create any contractual relationship between the Contractor and the HHAC, or in any way impair the HHAC's rights under the HHAC Agreement.
- .5 The Owner is fully responsible to the HHAC under the HHAC Agreement for the acts and omissions of any party employed by the Owner, directly or indirectly, to carry out its obligations under the HHAC Agreement. However, this does not modify any of the Owner's or Contractor's rights and obligations with regard to liability, indemnifications or insurance under the Agreement between Owner and Contractor or the Contractor's status as an independent contractor who is not acting as an agent of the Owner.
- .6 The Owner has agreed to comply with any directive issued to it by the HHAC, which the HHAC deems necessary to ensure compliance with the terms of the HHAC Agreement.
- .7 The HHAC will pay the Owner for Work completed in satisfaction of the Owner's obligations under the HHAC Agreement on a periodic basis in accordance with the approved budget and work plan upon submission of a properly executed claim in a form acceptable to the HHAC. Claims shall be supported by such documentation as the HHAC may require and the HHAC may conduct inspections, tests or reviews of the activities for which payment is requested to determine whether such activities have been properly performed before approving payment.
- .8 Neither the Owner nor the HHAC will pay the Contractor for inferior or defective work.
- .9 All references to the Dormitory Authority of the State of New York (hereinafter referred to as "DASNY") herein provided, shall also include any HHAC approved Architectural Consultant if applicable.

§ 1.6.2 The Owner is also required under the HHAC Agreement to include in any construction contract various provisions relating to the HHAC and its role and that of its representatives in monitoring the Work under this Contract which relate to the Owner's obligations under the HHAC Agreement. Therefore, it is agreed as follows:

- .1 The Contractor may, prior to the execution of the Contract or at any time during the Contract, upon request, examine a copy of the HHAC Agreement.

- .2** Nothing in this Agreement in any way curtails or diminishes the HHAC's rights and the Owner's obligations under the HHAC Agreement.
- .3** The Contractor acknowledges and assents to the HHAC's option to direct the Owner to assign to the HHAC or its agent the Owner's rights and interest in this Contract.
- .4** Except in the event that the HHAC exercises its option to require the Owner to assign this Contract to the HHAC, nothing contained in this Contract shall create any contractual relationship between the Contractor and the State of New York, the HHAC, or DASNY.
- .5** The Work to be performed under this Contract will be monitored for the HHAC by representatives of DASNY. The Contractor shall allow DASNY representatives to review and inspect the Work as it progresses. Failure of the Owner to pay the Contractor for a Certificate for Payment or amount disputed by the DASNY representative shall not constitute Failure of Payment.
- .6** The Architect shall review Applications for Payment as described in Article 9. In addition, the DASNY representative, acting on behalf of the HHAC, shall review Certificates for Payment issued by the Architect. Payments from the HHAC to the Owner shall be based on the DASNY representative's acceptance of Certificates for Payment, in order to prevent loss for any of the reasons stated in §9.6.
- .7** The Owner must obtain the prior approval of the HHAC for any Change Order or Construction Change Directive increasing the Contract Sum, extending the Contract Time, or affecting the fitness of the project for its intended use.
- .8** Any increases in the Contract Sum, as a result of Change Orders, or otherwise, are entirely the responsibility of the Owner and in no way obligate the HHAC to amend the HHAC Agreement or to increase the amount of money available to the Owner under this Agreement.
- .9** The State of New York, Office of Temporary and Disability Assistance, Dormitory Authority of the State of New York, and the New York State Homeless Housing and Assistance HHAC shall be named as an additional insured party on all insurance required under this Contract. The Contractor shall ensure that the project is clearly identified on the insurance certificate in the "Certificate Holder" section by noting the HHAP project number (e.g., 10-01) along with the HHAC address.
- .10** The HHAC may direct the Owner to order the suspension of the Work per §13.3. Any increase in the Contract Sum shall be agreed to in writing by the Owner, the HHAC, and the Contractor prior to the suspension of Work. If an agreement cannot be reached, the Owner may opt to terminate the Contract.
- .11** The Contractor agrees that the information about the Owner's financial arrangements presented upon the execution of this Contract (including that relating to State funding) and the evidence furnished about such arrangements are satisfactory for the purposes of §2.2.

## **ARTICLE 2 OWNER**

### **§2.1 GENERAL**

**§2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative. The terms Owner and County are interchangeable. Wherever the term Owner or County is used, it shall mean the County of Orange.

**§2.1.2** The Owner shall furnish to the Contractor within Fifteen (15) Days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the Site, and the Owner's interest therein at the time of execution of the Agreement and, within Five (5) Days after any change, information of such change in title, recorded or unrecorded.

### **§2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§2.2.1** The Owner shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the Site of the Project, and a legal description of the Site. The Contractor shall be responsible to verify the accuracy of information furnished by the Owner and shall exercise proper precautions relating to the safe performance of the Work.

**§2.2.2** Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit and any other federal, state or local government approvals not the responsibility of the Contractor. The Owner shall furnish surveys which may be an existing survey certified to HHAC, describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

**§2.2.3** Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness.

**§2.2.4** Not used.

**§2.2.5** The Owner shall forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect-.

**§2.2.6** The provisions of this §2.2 are in addition to other duties and responsibilities of the Owner listed these General Conditions including, but not limited to, those in Article 6 (Construction by Owner or by Other Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

### **§2.3 OWNER'S RIGHT TO STOP THE WORK**

**§2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by §12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by §6.1. Contractor shall be responsible to the Owner, Architect, Construction Manager

and any other Contractors, Subcontractors or Sub-Subcontractors for any delays or damages suffered by such failure or failures to correct any such deficiencies.

#### **§2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

**§2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Seven- (7-) Day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such Seven- (7-) Day period, give the Contractor a second written notice to correct such deficiencies within a Three- (3-) Day period. If the Contractor, within the Three- (3-) Day period after receipt of such second notice, fails to commence and continue with due diligence to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued, deducting from payments then or thereafter due the Contractor, the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's, Construction Manager's, other Contractors and their respective consultant's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### **ARTICLE 3 CONTRACTOR**

#### **§3.1 GENERAL**

**§3.1.1** The term "Contractor" means each Contractor or each Contractor's authorized representative designated in a writing to the Owner. The Contractor's representative shall not be changed without ten days' written notice to the owner provided said representative is approved in writing by the Owner. When a certain Contractor is responsible for certain acts, that Contractor shall be specifically indicated. The plural term "Contractors" refers to persons or entities who also perform construction or similar services for the Project under separate Contracts with the Owner (e.g. other Contractors or installation contractors for Owner-purchased equipment) which may include or exclude a Contractor(s), depending upon the context.

**§3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents and Submittals approved pursuant to §3.12.

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

#### **§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the Contract Documents with each other and with the information furnished by the Owner pursuant to § 2.2, 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. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Construction Manager and the Architect as a Request for Information in such form as the Architect may require.

**§3.2.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Construction Manager and the Architect, but 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. The Contractor is required to ascertain that the Contract Documents are in accordance with applicable Laws and any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Construction Manager and the Architect.

**§3.2.2** Contractor shall examine all the available records, including information referenced in Geotechnical Data, pertaining to the Work; make a field examination of the Site and rights-of-way; and inform itself about the character, quality and quantity of surface and subsurface materials and water conditions to be encountered, the quantities in the various Sections of the Work, any aspect of the means, methods, techniques, sequences and procedures needed for the prosecution of the Work, the location and suitability of all construction materials, the local labor conditions, safety precautions and programs incident, and all other matters in connection with the Work under this Contract. There is no expressed or implied guarantee as to the accuracy of the data or any interpretation, opinion, method, sequence, or procedure. Contractor states that it recognizes this, and that it has formed its own opinion of all these conditions from an inspection of the Site and has made its own interpretation of the data.

**§3.2.3** Contractor shall have full responsibility for locating all Underground Facilities, for coordination of underground Work with existing Underground Facilities, and to provide safety and protection thereof. The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Architect by the owners of such Underground Facilities or by others. Owner and Architect shall not be responsible for the accuracy or completeness of any such information or data.

**§3.2.4** Contractor acknowledges that the Contract Sum and detailed Draft Construction Schedule for completion of the Work are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of Owner, Construction Manager or Architect. The Owner, Construction Manager and Architect assume no responsibility for any understanding or representation made by any of their representatives during or prior to execution of this Contract unless such understanding or representations are expressly stated in the Contract and the Contract expressly provides that the responsibility is assumed by Owner, Construction Manager or Architect. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for:

- .1 Review and checking all such information and data;
- .2 Locating all Underground Facilities shown or indicated in the Contract Documents;
- .3 Coordination of the Work with the owners of such Underground Facilities during construction; and
- .4 The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

**§3.2.5** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or Requests for Information pursuant to §3.2.1 and §3.2.2, the Contractor shall make Claims as provided in § 4.4. If the Contractor fails to perform the obligations of §3.2.1 and §3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner, Construction Manager or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor reasonably recognized such error, inconsistency, omission or difference and failed to report it to the Construction Manager and the Architect or, unless such damages are attributable to the Contractor's errors, inconsistencies or omissions.

### **§3.3 CONTRACTOR'S SUPERVISION AND CONSTRUCTION PROCEDURES**

**§3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, subject to overall

coordination of the Construction Manager as provided in §4.3.3 and §4.3.4. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Construction Manager and the Architect and shall not proceed with that portion of the Work without further written instructions from the Construction Manager and the Architect.

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

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

**§3.3.4** The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.

**§3.3.5** Obtain all permits, licenses and certificates, including certificates of occupancy, required by all governmental authorities, having jurisdiction over the Work, except as otherwise provided in the Contract Documents or directed by the Owner in writing, and assist in the preparation and giving of such notices and arrange for all inspections as are legally required in connection with same. The cost of such permits, licenses and certificates shall be paid directly by the Contractor.

**§3.3.6** In consultation with the Construction Manager, make arrangements for temporary construction facilities on the Site to be used by the Contractor and Subcontractors and assign to each Subcontractor the area and provide general service and facilities in the support of all Subcontractors, including, but not limited to, trash removal, toilets and washrooms, water for construction use and fire protection, construction service roads and their maintenance, power, general purpose hoists and security guards.

**§3.3.7** Coordinate the Work by Contractor's Subcontractors on the Project until Final Completion satisfactory to the Construction Manager and Architect and acceptance of the Project by the Owner.

**§3.3.8** Establish and maintain quality control procedures for all parts of the Work. Take measures to prevent the installation of any Work not in conformity with the Contract Documents, including, but not by way of limitation, prevent use of material or equipment not properly approved, suspend operations upon the installation thereof, and report promptly to the Construction Manager and Architect that particular Work or materials fail to conform to the Contract Documents.

**§3.3.9** Ascertain that all inspection and testing of material or equipment required to be tested under the terms of the Contract Documents are performed by qualified consultants. Any inspection and testing that should be performed by an independent third-party to prevent conflict of interest shall be arranged and paid for by the Construction Manager in accordance with §3.23.

**§3.3.10** Maintain equipment and material delivery records and inventory records for tools, equipment, machinery and office furniture acquired and employed in managing the Work.

**§3.3.11** Maintain cost accounting records with respect to the Work in accordance with generally accepted accounting procedures. Provide, at the request of the Owner through the Construction Manager, a separate breakdown of the portion of the Cost of the Work allocable to building and equipment items for purposes of determining

depreciation and for other federal income tax purposes. The Contractor shall Work with the Construction Manager to establish a satisfactory cost accounting system that will provide the Owner with the breakdown of costs which the Owner needs. Such accounting procedure shall be consistently applied throughout the completion of the Work, in addition to any other accounting required by the Contract Documents.

**§3.3.12** Collect and deliver to the Construction Manager, in an orderly fashion, all guarantees, warranties, maintenance and operations manuals, part lists, keying schedules and other such data, documents, and any other items set forth in the Close-Out Requirements listed in Division 01 of the Specifications.

**§3.3.13** Prepare for the Owner's use, operating manuals for the various building systems.

**§3.3.14** Maintain orderly files for correspondence, reports of job conferences, Shop Drawings and other submissions, reproductions or original Contract Documents, including all Change Orders, supplemental Drawings, Modifications, and all other Project-related documents.

**§3.3.15** Maintain a daily field report describing Work and activities accomplished on each working day, the number of each Subcontractor's employees at the Site, material deliveries, labor difficulties, observations in general and specific observations as required.

**§3.3.16** Promptly advise the Construction Manager and Architect as to the feasibility, costs, delay or accelerations, or other adverse or beneficial effects on schedule or costs anticipated with respect to proposed or ordered changes or Extra Work and promptly advise the Construction Manager and Architect with respect to any and all matters affecting either Project costs or progress.

#### **§3.4 LABOR AND MATERIALS**

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

**§3.4.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees, Subcontractors and any other persons carrying out the Contract on behalf of Contractor. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**§3.4.3** The Contractor may make materials substitutions only with the consent of the Owner, after evaluation by the Construction Manager and Architect and in accordance with a Change Order or Construction Change Directive. All costs and time for making substitutions shall be borne by the Contractor.

**§3.4.4** Notwithstanding the delivery to and storage on the Site of materials, equipment and facilities to be incorporated into the Work by the Contractor, and the partial or total payment therefore by the Owner, the Contractor shall be responsible for, and shall bear all losses with respect to, the care and maintenance of such materials, equipment and facilities until they have been incorporated into the Work and such portion of the Work has been accepted in writing by the Owner. The Contractor shall store all materials delivered to the Project Site in the area designated by the Construction Manager so as to facilitate the orderly progress of the Work. If the Contractor does not store such materials in accordance with such directives, the Contractor shall bear the cost, if any and when incurred, of moving such materials, as well as the cost of any damage attributable to the unauthorized storage of such materials. The Contractor shall not be responsible for the storage of materials by the Owner on the Site not related to Contractor's Work, and the Owner shall not store any such materials so as to interfere with Contractor's execution of its Work. Acceptance of materials by or on behalf of the Owner (other than materials, fixtures or equipment provided directly by the Owner) shall not bar future rejection if subsequently found to be defective or inferior in quality or

uniformity to materials specified in the Contract Documents, or if such materials are found not to be as represented. The Contractor's responsibility set forth in this §3.4 shall be subject to or reduced by amounts received or recoverable under applicable insurance required to be maintained by the Contract Documents.

### **§3.5 WARRANTY**

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

**§3.5.2** The Contractor shall Warrant all their Work for one (1) year including all labor and materials. Each Contractor is responsible for Warranties related to its own Contract. If the products installed provide a longer period of warranty, the longer period shall prevail. The starting date for Warranty periods for all material, workmanship or equipment provided by the Contractor shall be the date of Substantial Completion for the Project. No Warranty period shall start before the date of Substantial Completion. Any Contractor that plans to use permanent building equipment and/or systems and/or utilities prior to Substantial Completion shall include in their Lump Sum Bid all costs for utility charges and any extended Warranties required to ensure that the base term for the Contractor's Warranty commences at the date of Substantial Completion.

**§3.5.3** Rejection of Warranties: The Owner reserves the right to reject product warranties and to limit selections to products with warranties not in conflict with requirements of the Contract Documents.

**§3.5.4** Disclaimers and Limitations: Manufacturer's disclaimers and limitations on product warranties do not relieve the Contractor of its Warranty on the Work that incorporates the products, nor does it relieve suppliers, manufacturers and subcontractors of any requirement to countersign special warranties with the Contractor.

**§3.5.5** Replacement Cost: Upon determination that Work covered by the Warranty has failed, Contractor shall replace or rebuild the Work to an acceptable condition complying with requirements of Contract Documents. The Contractor is responsible for the cost of replacing or rebuilding defective Work regardless of whether the Owner has benefited from use of the Work through a portion of its anticipated useful service life. Replacement costs shall include removal and replacement of other Work by Contractor or others that has been damaged as a result of such failure or that must be removed and replaced to provide access for correction of Warranted Work.

**§3.5.6** Reinstatement of Warranty: When Work covered by the Warranty has failed and been corrected by replacement or rebuilding, Contractor shall reinstate the Warranty by written endorsement. The reinstated Warranty shall be equal to the original Warranty with an equitable adjustment for depreciation.

**§3.5.7** Owner's Recourse: Written Warranties made to the Owner are in addition to implied warranties and shall not limit the rights and remedies otherwise available at law or in equity, nor shall Warranty periods be interpreted as limitations on time in which the Owner can enforce such other rights or remedies.

### **§3.6 TAXES**

**§ 3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when Bids are received or negotiations are concluded, whether effective or

merely scheduled to go into effect by the time of purchase. However, the materials to be incorporated into the Project or Work as set forth in the Contract Documents are exempt from New York State sales tax.

### **§3.7 PERMITS, FEES AND NOTICES**

**§3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all applicable permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when Bids are due or negotiations concluded.

**§3.7.2** The Contractor shall comply with and give notices required by Laws applicable to performance of the Work.

**§3.7.3** It is the Contractor's responsibility to ascertain that the Contract Documents are in accordance with the current version of all applicable Laws. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Construction Manager, Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**§3.7.4** If the Contractor performs Work knowing it to be contrary to Law without notice to the Construction Manager, Architect and Owner; the Contractor shall be responsible for correcting all such Work and shall be responsible for all resulting costs, losses or damages.

**§3.7.5** Contractor shall supply the Construction Manager, within Two (2) business days of issuance, One (1) copy of all permits, licenses, inspection reports, releases, jurisdictional settlements, notices and similar documents pertaining to this §3.7.

### **§3.8 CONTINGENCIES (ALLOWANCES)**

**§3.8.1** The Contractor shall include in the Contract Sum all Contingencies (Allowances) stated in the Contract Documents. Items covered by Contingencies (Allowances) shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. Refer to Section 012100 "ALLOWANCES" for related information.

**§3.8.2** The Scope of Work and associated costs for items charged to Contingencies must be reviewed and approved in writing by the Architect, Construction Manager and the Owner as per the Change Order process described in Article 7 of these General Conditions.

**§3.8.3** Unless otherwise provided in the Contract Documents:

- .1** Authorization to proceed on Contingency based Work shall be provided by the Owner in sufficient time to avoid delay in the Work;
- .2** Contingencies shall cover the cost to the Contractor, less applicable trade discounts, as approved by the Owner;
- .3** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated Contingency amounts shall be included in the Contract Sum and not in the Contingencies.
- .4** The amount of each Contingency shall be listed as a separate line item(s) on the Contractor's Schedule of Values;

.5 Whenever costs are more than or less than the balance of remaining Contingency funds, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the Contingencies listed pursuant to §3.8.3.4.

.6 At closeout of Contract, funds remaining in the Contingencies will be credited to the Owner by deductive Change Order.

### **§3.9 SUPERVISION**

**§3.9.1** The Contractor shall employ a competent Superintendent and necessary assistants all of whom shall be subject to the Owner's and HHAC's approval and who shall be on Site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. It shall be the Contractor's responsibility to manage and coordinate the Work of their Subcontractors and Sub-Subcontractors.

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

**§3.9.3** The Contract shall not employ a proposed Superintendent to whom the Owner, Architect, Construction Manager, HHAC or DASNY has made reasonable and timely objection. The Contractor shall not change the Superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. If supervision is deemed inadequate at any time, any objectionable Supervision shall be removed and replaced, at Owner's request, at no additional cost to Owner.

### **§3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§3.10.1** Contractors shall submit required scheduling information in accordance with Specification provisions pertaining to Scheduling including the start and finish of each trade. Refer to Section 013300 "SUBMITTALS" for related information.

### **§3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**§3.11.1** The Contractor shall maintain at the Site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, in addition approved Shop Drawings, Product Data, Samples and similar required Submittals. These documents shall be available to the Construction Manager and Architect and shall be delivered to the Construction Manager for Submittal to the Owner upon completion of the Work.

### **§3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Refer to Section 013300 "SUBMITTALS" for additional and related information.

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

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

**§3.12.4** Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. The purpose of their Submittal is to demonstrate for those portions of the Work for which Submittals are required by the Contract Documents the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of §3.12.7.

**§3.12.5** The Contractor shall review, approve and submit to the Construction Manager, in accordance with the schedule and sequence approved by the Construction Manager, Shop Drawings, Product Data, Samples and similar Submittals required by the Contract Documents. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar Submittals with related documents submitted by other Contractors. Informational Submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. The Contractor shall direct specific attention, in writing on resubmitted Shop Drawings, Product Data, Samples or similar Submittals, to revisions other than those requested by the Construction Manager and Architect on previous Submittals. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action. By approving and submitting Shop Drawings, Product Data, Samples and similar Submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. The Contractor shall only have one (1) rejection for a submitted or equal specified item. After that the Contractor will have to pay for all expenses for any additional review time.

**§3.12.6** The Construction Manager shall receive from the Contractor and review and approve all Shop Drawings, Product Data and Samples, coordinate them with information received from other Contractors. The Construction Manager's actions will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of other Contractors, the Owner, or the Architect. The Construction Manager shall transmit approved Submittals to the Architect.

**§3.12.7** The Architect shall review and approve or take other appropriate action upon the Contractor's Submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of the other Contractors, the Owner, or the Construction Manager, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's Submittals shall not relieve the Contractor of the obligations under §3.3, §3.5 and §3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§3.12.8** The Contractor shall not be required to provide professional services in violation of applicable Laws or which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all

performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other Submittals prepared by such professional. Shop Drawings and other Submittals related to the Work designed or certified by such professional, shall bear such professional's written approval when submitted to the Architect. The Owner, Construction Manager and Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner, Construction Manager and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. The Construction Manager and Architect will review, approve or take other appropriate action on such Submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall only be responsible for the adequacy of the performance or design criteria required by the Contract Documents, if any.

**§3.12.9** The Contractor shall perform no portion of the Work requiring Submittal and review of Shop Drawings, Product Data, Samples or similar Submittals until the respective Submittal has been approved by the Construction Manager and Architect. The Work shall be in accordance with approved Submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar Submittals unless the Contractor has specifically informed the Construction Manager and the Architect in writing of such deviation at the time of Submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar Submittals by the Architect's approval thereof.

**§3.12.10** The Construction Manager, Architect and/or the Contractor will be responsible for all costs related to any loss of time with respect to the Master Construction Schedule due to delays created by those parties, as applicable.

### **§3.13 USE OF SITE**

**§3.13.1** The Contractor shall confine operations at the Site to areas permitted by Laws and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

**§3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the Site. Each Contractor shall confine its operations to the limits of the rights-of-way indicated on the Drawings and shall not trespass on private property. Where the Owner has procured easements and rights-of-way from individuals, extreme care must be exercised while working on these areas. Prior to use of heavy equipment on or over developed surfaces (lawns; gardens; driveways; courtyards; brick, stone or paved paths, etc.), the surface of the area shall be planked, or otherwise adequately protected to prevent harm by tractors, heavy wheels, etc. Bulldozers and other heavy equipment shall not be used for backfilling near developed surfaces (lawns; gardens; driveways; courtyards; brick, stone or paved paths, etc.). Contractor shall be responsible at its own cost for restoring all affected areas back to original condition, unless such area is subject to a Contract Modification.

### **§3.14 CUTTING AND PATCHING**

**§3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. Refer to Section 012700 "CUTTING & PATCHING" for related information.

**§3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or other Contractors by cutting, patching, excavating or otherwise altering such

construction. Contractor shall be responsible for the repair, replacement or other costs related to any such damages.

**§3.14.3** The Contractor shall not cut or otherwise alter construction by the other Contractors or the Owner's own forces except with written consent of the Construction Manager, Owner and such other Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Contractors or the Owner, the Contractor's consent to cutting or otherwise altering the Work.

**§3.15 CLEANING UP**

**§ 3.15.1** Each Contractor shall:

- .1** Provide labor and equipment necessary to remove debris and scrap materials from Work areas inside the building, on a daily basis. Refer to Section 015000 "TEMPORARY FACILITIES AND SERVICES" and Section 017419 "CONSTRUCTION WASTE MANAGEMENT" for related information.
- .2** Maintain areas in a well-groomed, clean condition acceptable to the Owner.
- .3** Eliminate fire hazards by removing combustible materials from the building immediately upon being classed as scrap, to the designated location of the Site.
- .4** Clean Owner-occupied areas at the end of each Work period and restore such areas to the condition existing at the beginning of the period, unless otherwise acceptable to the Owner.
- .5** Take measures during construction to enforce protection of adjacent surfaces during application of finishes, etc., and protection of finished resilient flooring and similar finished surfaces.
- .6** Provide equipment and labor to keep storage areas and Work areas clear to maintain continuous operations.
- .7** Remove snow whenever the fall totals one inch (1") or more, provide sand and/or salt in icy areas, and remove, by pumping or other acceptable means, any areas of standing water which interfere with operations or access to Work locations.
- .8** Store materials only in those areas designated by the Construction Manager. All materials stored at the Site shall be in a neat and orderly manner.

**§3.15.2** On completion of the Work, any areas of Owner's property which have been disturbed due to these operations, and the alteration or restoration of which is not specifically included in any Section of the Specifications, shall be restored by Contractor to the original condition. This shall include removal and replacement of damaged paving, sidewalks, curbs, and any other incidental items. Restoration Work shall be in accordance with the requirements of these specifications for similar or adjacent Work where such exist; otherwise all Work shall be as directed by the Owner.

**§3.15.3** On completion of the Work, any areas of adjacent municipal or private property which are damaged or disturbed as a result of the operations under this Contract, shall be corrected or replaced by Contractor. Corrective Work on municipal property shall be in accordance with requirements of the municipal authority having jurisdiction, and to the satisfaction of such authority and the Owner. Corrective Work on private property generally shall be in accordance with requirements for Work of a similar nature under this Contract, shall be at least equal to the adjacent undamaged surfaces, and shall be carried out to the satisfaction of the Owner, the owner of the property and any municipal authority having jurisdiction.

**§3.15.4** On completion of the Work, items of building construction which have been damaged or disturbed during operations under this Contract, and the reconditioning, repair or replacement of which does not specifically form part of this Contract, shall be corrected by the Contractor to the reasonable satisfaction of the Owner.

**§3.15.5** In addition to the above requirements, upon completion of the Work or of an individual portion thereof, the Contractor, immediately prior to turning over the Work of the completed portion thereof to the Owner, shall arrange for the proper and complete performance of the following:

- .1 Cleaning and polishing of interior and exterior surfaces of glass and replacement of any broken panes;
- .2 Cleaning and polishing of finish hardware and adjustment of closers, holders, locksets, etc., as required for proper operation;
- .3 Removal of fingerprints, soot smudges and similar deposits from finished surfaces;
- .4 Removal of paint spillage or overspray, smeared caulking or sealing compounds and similar defects, from finish surfaces including mechanical and electrical devices and equipment;
- .5 Removal and replacement of caulking or sealant beads not properly adhering to substrate;
- .6 Removal of temporary coverings on applied floor finish areas and final, thorough broom cleaning of finished floors. If final broom cleaning does not, in the opinion of Owner, provide a floor surface which is suitable for moving in of the Owner's furnishings and equipment, scrub and polish or otherwise refinish areas as directed until acceptable to the Owner;
- .7 Soiled carpeting shall be shampooed by a professional carpet cleaning company. If carpet is not cleaned to the reasonable satisfaction of the Owner, the carpet shall be replaced by Contractor at its sole expense;
- .8 Reconditioning of permanent heating equipment used by Contractor for provision of temporary heat during construction, including replacement of filter elements;
- .9 Restoration of previously finished surfaces damaged due to failure or removal of protective measures;
- .10 Cleaning by washing of solid concrete walls, where exposed;
- .11 Replacement of burned out light bulbs, tubes, etc.

**§3.15.6** If the Contractors fails to clean up as provided in the Contract Documents, the Construction Manager may do so with the Owner's approval and the cost thereof shall be charged to the Contractors.

### **§3.16 ACCESS TO WORK**

**§3.16.1** The Contractor shall provide the Owner, HHAC, DASNY, Construction Manager and Architect access to the Work in preparation and progress wherever located.

### **§3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

**§3.17.1** 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, Construction Manager and Architect and their respective consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§3.18 INDEMNIFICATION**

**§3.18.1** To the fullest extent permitted by Law, the Contractor shall defend, indemnify and hold harmless the Owner, HHAC, DASNY, the Construction Manager, the Architect and any of their respective officers, directors, agents, employees, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever (including damage done to the environment and damage to persons and/or property occasioned by any such damage to the environment) which arise out of, result from or are related to, (a) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, and (b) any failure of the Contractor or its subcontractors to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor or its subcontractors, or any breach of any agreement, representation or Warranty of the Contractor contained in the Contract Documents but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable.

**§3.18.2** The foregoing indemnification includes, but is not limited to, all costs and expenses, including reasonable attorneys' fees, court costs, and expenses, liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to any Indemnitee, whether based upon or claimed to be based upon, statutory (including workmen's compensation), contractual, tort or other liability or any Indemnitee, and including any claims, damages, losses, expenses, demands, liabilities or actions to the extent caused by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except to the extent it is caused in part by a party indemnified hereunder.

**§3.18.3** The foregoing indemnification shall also include all costs and expenses, including attorneys' fees and expenses, liabilities, expenses, damages, losses, claims, demands and actions for trademark, copyright or patent infringement under §3.17, or unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution, or any other infringement of personal or property rights, of any kind whatever. The provisions of this indemnification shall not be construed to eliminate, negate, abridge, or otherwise reduce any other indemnification or right which an Indemnitee has by Law.

**§3.18.4** Without limiting the generality of §3.18.1 the Contractor further agrees to indemnify and hold the Indemnitees harmless from any and all losses or damages arising out of jurisdictional labor disputes or other labor troubles of any kind that may occur during performance of the Work except to the extent the same arises in connection with persons (other than Contractor) hired or employed directly by the Owner.

**§3.18.5** Without limiting the generality of §3.18.1 the Contractor and all Subcontractors shall indemnify and save harmless the Indemnitees from any and all claims, demands, causes of actions or suits of whatever nature arising out of services, labor, equipment or materials furnished by the Contractor in the performance of the Work, and from all laborers', mechanics' and material men's liens upon the property upon which the Work is to be performed, and arising out of the services, labor, equipment or materials furnished by the Contractor, and the Contractor shall keep all materials, tools, equipment and machinery used in connection with any of the Work free and clear of all liens,

claims and encumbrances of any nature whatsoever arising from the performance of the Work by the Contractor or any Subcontractors.

**§3.18.6** In claims against any person or entity indemnified under this §3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under Laws regarding Workers' Compensation, Disability Benefits or other Employee Benefits.

**§3.18.7** The obligations of the Contractor under this §3.18 shall not extend to the liability of the Construction Manager, Architect, their consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Construction Manager, Architect, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

### **§3.19 AS-BUILT DRAWINGS**

**§3.19.1** As the Work progresses, the Contractor shall maintain a current and accurate record of all deviations from the Drawings and Specifications which occur in the Work as actually constructed and installed. Upon completion of the Work, and prior to Final Payment, the Contractor shall furnish to the Owner two complete record sets, one of which shall be a set of Mylar reproducible documents and in electronic (AutoCAD) format, of "As Built Drawings" for HVAC, Plumbing, Fire Protection, Electrical, Security, Technology Cabling, Integrated Drawings, Glass and Glazing, and such other descriptions, drawings, sketches, marked prints and similar data, depicting the Project as modified during construction, with the exception of architectural and structural "as built" drawings which shall be prepared by the Architect, per the terms of the Owner-Architect Agreement, based on information provided by the Contractor as described in the Contract Documents. Refer to Section 017830 "PROJECT RECORD DOCUMENTS" for related information.

### **§3.20 PROTECTION OF SURFACES, UTILITIES AND STRUCTURES**

**§3.20.1** Each Contractor shall be responsible for the protection of all existing surfaces, utilities and new surfaces intended to remain, including adjacent structures and spaces that are affected by the Work. Any damages or disturbances to such surfaces, utilities or structures during the execution of the Work under this Contract shall be repaired and/or replaced by the Contractor at no cost to the Owner.

### **§3.21 ENVIRONMENTAL REQUIREMENTS**

**§3.21.1** Throughout performance of the Work, the Contractor shall conduct all operations in such a way as to minimize impact on the natural environment and prevent any spread or release of contaminated or hazardous substances.

**§3.21.2** The Contractor shall:

- .1** Comply with all Laws governing environmental requirements and conduct the Work in accordance with the requirements of this Contract, including complying with permit requirements and Project plans and approvals.
- .2** Provide all documentation required by all levels of governing authority and the Owner concerning environmental requirements.
- .3** Provide and maintain effective planning and field control measures (including, but not limited to:

obtaining certifications; conducting analyses and monitoring of activities as required by the Contract, permit conditions, or other applicable Laws; using appropriate equipment; and proceeding in accordance with permit requirements) for the following activities:

- .1 wastewater discharges to land, surface water, or groundwater;
  - .2 extraction and supply of water;
  - .3 storm water management;
  - .4 spill prevention and response;
  - .5 erosion and sedimentation control;
  - .6 minimization of dust and air emissions, containment of chemical vapors, control of engine exhaust gases, and control of smoke from temporary heaters;
  - .7 noise and vibration control;
  - .8 waste and hazardous waste management;
  - .9 Work area restoration, including revegetation;
  - .10 maintenance of traffic and pedestrians;
  - .11 control of sanitary facilities;
  - .12 proper storage of fuels and other potential contaminants; and
  - .13 proper and legal disposal, off-Site unless otherwise provided, of waste and spoil resulting from construction activities.
- .4 Develop and maintain a written environmental compliance plan (“Environmental Compliance Plan”) that provides the Contractor’s plan for compliance and that compiles all acts, procedures, and other requirements the Contractor must follow to comply with all Laws and the Contract Documents. Contractor shall submit its written Environmental Compliance Plan to the Owner for review Thirty (30) Days after Notice of Award and in any event prior to commencing Work at the Site. The Owner’s review of the Environmental Compliance Plan shall not relieve the Contractor of its obligations under this Contract or as imposed by applicable Laws. The Contractor is solely responsible for the adequacy and effectiveness of its Environmental Compliance Plan and has the sole responsibility for implementing and enforcing it.
- .5 Comply with all access restrictions, including prohibitions on access to certain areas on or adjacent to the Site and require its employees and those of its Subcontractors and Material men to comply with all signage and flagging related to restricted areas. Restricted areas include, but are not limited to, environmental mitigation study areas and cultural, historical, and archaeological sites.
- .6 Not proceed with any renovation or demolition Work until:
- .1 asbestos surveys have been completed and notifications have been delivered to the appropriate regulatory agencies in accordance with applicable Laws; and

.2 the Owner specifically authorizes such Work to proceed.

.7 If asbestos-containing materials in addition to those identified in completed surveys be uncovered during performance of the Work, the provisions of §3.21.2.7 will apply.

.8 Immediately stop Work in any area (Stop Work Area) where any of the following are uncovered:

.1 contaminated soil indicators, such as odor or appearance;

.2 unknown containers, piping, underground storage tanks, or similar structures; or

.3 any other materials that are reasonably suspected to be toxic or hazardous.

The Contractor shall immediately notify the Owner, who will determine the Stop Work Area and confirm it in writing. Activity in the Stop Work Area can only resume upon the Owner's written approval.

.9 Immediately stop Work in any area where cultural resources or artifacts, or materials with archaeological or historical value are discovered and notify the Owner. The Contractor shall ensure that no artifacts or materials shall be disturbed or taken from the location of discovery. Neither the Contractor nor any of its Subcontractors (of any tier) or suppliers shall have property rights to such artifacts or materials. Activity in the Stop Work Area can only resume upon the Owner's written approval.

.10 Manage, handle, store, transport, and dispose of all hazardous waste generated by the Contractor during its Work in accordance with all applicable Laws. The managing, storing, and disposing includes, but is not limited to, waste minimization, hazardous waste generator registration, hazardous materials inventory, employee training, hazardous waste spill management and reporting, proper storage of hazardous waste, equipment decontamination, preparation of manifests, on-Site and off-Site transport of hazardous waste, and selection and use of off-Site final disposal facilities.

### **§3.22 REQUESTS FOR INFORMATION**

**§3.22.1** In the event that the Contractor determines that some portion of the Contract Documents for the Project requires clarification or interpretation by the Architect, the Contractor shall submit a Request for Information (RFI) in writing to the Construction Manager. RFI shall be submitted in writing to the Construction Manager on a form provided by the Construction Manager.

.1 Construction Manager shall provide RFI numbers and RFI forms.

.2 If submitted via email subject line of the email shall clearly read "RFI" with a summary title and shall be on RFI forms.

**§3.22.2** The Contractor shall define the issue that requires clarification or interpretation in clear and concise language as follows:

.1 Indicate location of the issue within the building, by room number, name and nearest columns.

.2 Confirm that reasonable locations for the information required have been reviewed and document those locations by specific references to the Drawings and Project Manual.

.3 Include a review for systemic or global implications, including review of other pending RFI's and Work of other phases, so that the final RFI submitted represents a reasonable consolidation of similar

requests.

**.4** Description of what the Contractor believes to be the intent of the design documents, with due regard to §3.2 of the Agreement, along with reasons why the RFI is required.

**.5** Indicate any schedule and/or cost impact.

**§3.22.3** The Contractor shall coordinate and review the RFI's originating from its trades, Subcontractors, suppliers, manufacturers, etc. for compliance with this process, including polling them and meeting with them on-Site to review the issue prior to its submission as an RFI.

**§3.22.4** RFI's that do not comply with the requirements of this §3.22 will be returned to the Contractor for revision and resubmission.

**§3.22.5** The Architect and/or Construction Manager will review all RFI's to determine whether they are RFI's within the meaning of this term as defined above. If the Architect and/or Construction Manager determines that the document submitted is not an RFI, it will be returned to the Contractor un-reviewed as to content, for resubmission in the proper manner and it will be removed from the RFI log.

**§3.22.6** The Architect and Construction Manager shall endeavor to reply to all RFIs within Ten (10) business days. If additional time is required for review, the Contractor shall be informed within said Ten (10) business days. However, in no case shall the Architect and/or Construction Manager be required to respond to an RFI in less than Five (5) business days.

**§3.22.7** Responses to RFI's shall not change any requirements of the Contract Documents.

### **§3.23 TESTS AND INSPECTIONS**

**§3.23.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by Laws shall be made at an appropriate time. The Contractor shall cooperate with the Construction Manager who 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. All related costs of such tests, inspections and approvals shall be billed to Owner as Reimbursable Expenses of the Construction Manager. The Construction Manager shall give the Contractor and Owner written and timely notice of when and where tests and inspections are to be made so that their representatives may be present for such procedures. The Construction Manager shall be required to have all the required insurances for itself and the testing or inspection consultants, as may be required by the Owner's Risk Manager, before conducting any such tests, inspections or approvals and the Construction Manager and/or testing or inspection consultants shall bear the full cost of obtaining same. Notwithstanding the Construction Manager's duties under this §3.23.1 to arrange for tests, inspections and approvals; the Owner reserves the right to contract directly with any entity for testing, inspection or approvals. The Architect shall inspect all piles.

**§3.23.2** In the event that the Construction Manager, Architect, Owner or other public or independent authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under §3.23.1, upon written authorization from the Owner, the Construction Manager, with the cooperation of the Contractor, shall make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Construction Manager shall give timely notice to the Architect, HHAC, DASNY, Contractor and Owner of when and where tests and inspections are to be made so that their representatives may be present for such procedures. Such costs, except as provided in §3.23.3, shall be billed to Owner as Reimbursable Expenses of the Construction Manager. Notwithstanding the Construction Manager's duties under this §3.23.1 to arrange for tests, inspections and approvals; the Owner reserves the right to contract directly with any entity for testing, inspection or approvals.

**§3.23.3** If such procedures for testing, inspection or approval under §3.23.1 and §3.23.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated testing or inspection procedures and compensation for the Construction Manager's, Owner's or other Contractors' services and expenses shall be at the Contractor's expense and not billed to Construction Manager or Owner.

**§3.23.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager.

**§3.23.5** If the Contractor, Construction Manager, Architect or Owner will observe tests, inspections or approvals required by the Contract Documents, each will do so promptly and, where practicable, at the normal place of testing.

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

**§3.23.7** The Contractor shall cooperate with reasonable requests by the Owner to allow interested parties, invited by the Owner and observing all applicable COVID-19 safety precautions, to visit and observe the Work in progress, provided that such visits do not constitute a safety hazard or interfere with the progress of Work.

#### **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

##### **§4.1 ARCHITECT & CONSTRUCTION MANAGER**

**§4.1.1** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

**§4.1.2** The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.

**§4.1.3** Duties, responsibilities and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and, in the case of an Agreement with the Owner, the other party to the Agreement.

**§4.1.4** In case of termination of employment of the Construction Manager or Architect, the Owner shall appoint a construction manager or architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former construction manager or architect, respectively.

##### **§4.2 ADMINISTRATION OF THE CONTRACT**

**§4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives (1) during construction, (2) until Final Payment is made and (3) with the Owner's concurrence, from time to time during the correction period described in §12.2. The Construction Manager and Architect will advise and consult with the Owner and 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.

**§4.2.2** The Construction Manager will determine in general that the Work is being performed in accordance

with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**§4.2.3** The Construction Manager will schedule and coordinate the activities of the Contractors and the Owner's own forces in accordance with the latest approved Master Schedule. The Contractor shall participate and cooperate with other Contractors, the Construction Manager and Owner in reviewing their Draft Construction Schedules when directed to do so. The Contractor shall make any revisions to its Draft Construction Schedule deemed necessary after a joint review and mutual agreement. The Master Schedule shall constitute the schedule to be used by the Contractor, other Contractors, the Construction Manager and the Owner until subsequently revised.

**§4.2.4** The Architect will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when 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 quality or quantity of the Work. On the basis of on-Site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

**§4.2.5** The Construction Manager, except to the extent required by §4.2.3, and Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with each Contractor's Work, since these are solely the Contractor's responsibility as provided in §3.3.1, and neither will be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents, excepting the Construction Manager's or 's negligence in failing to stop Work that appears grossly not in accordance with the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

**§4.2.6** Communications Facilitating Contract Administration.

- .1** Except as otherwise provided in the Contract Documents, or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Construction Manager and shall contemporaneously provide the same communications to the Architect.
- .2** Communications by and with the Architect's consultants shall be through the Architect.
- .3** Communications by and with Subcontractors and material suppliers shall be through the Contractor.
- .4** Communications by and with other Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect.
- .5** Communication from the Construction Manager shall not be construed as releasing any Contractor or Subcontractor from performing all Work in accordance with the Contract Documents.
- .6** The Contractor or Subcontractors, their officers, employees, agents, subcontractors, or consultants should not speak directly with the general public or HONOR officers, personnel, or residents without the Construction Manager present for the discussion.

**§4.2.7** The Construction Manager will maintain at the Site for the Owner one record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition approved Shop Drawings, Product Data,

Samples and similar required Submittals. These will also be available to the Architect and the Contractor and will be delivered to the Owner upon completion of the Project.

**§4.2.8** The Construction Manager and Architect shall receive, review and approve all Shop Drawings, Product Data and Samples in accordance with §3.12.

**§4.2.9** The Construction Manager shall prepare Change Orders and Construction Change Directives and the Architect shall take appropriate action thereon in accordance with Article 7.

**§4.2.10** The Architect shall have authority to order Minor Changes in the Work as provided in §7.4.

**§4.2.11** The Construction Manager and the Architect shall review applications and prepare certificates for payments in accordance with Article 9.

**§4.2.12** The Construction Manager and the Architect shall conduct inspections and prepare certificates for Substantial Completion and Final Completion pursuant to §9.8 and §9.10.

**§4.2.13** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the Site. The duties, responsibilities and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§4.2.14** The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this §4.2.14, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until Ten (10) Days after written request is made for them.

**§4.2.15** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor and will not show partiality to either.

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

**§4.2.17** Rejection of Work; Additional Inspection or Testing.

**.1** The Architect, DASNY and the Owner will have authority to reject Work which does not conform to the Contract Documents, and to require additional inspection or testing, in accordance with §3.23, whether such Work is fabricated, installed or completed, but will take such action only after notifying the Construction Manager. Subject to review by the Architect, the Construction Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with §3.23, whether such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of §4.2.14 through §4.2.16 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this §4.2.17 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing

any of the Work.

**.2** In the event the Architect and/or Construction Manager views the Work or some portion thereof and finds that it must be rejected as not in accordance with the Contract Documents, a Notice of Non-Compliance will be issued by the Construction Manager to the Contractor for action. Payment shall not be made for any portion of the Work for which a Non-Compliance Notice has been issued and the Work not corrected to the satisfaction of the Architect and Construction Manager.

**.3** Upon receipt of a Non-Compliance Notice, the Contractor shall provide a written response to the Construction Manager within Five (5) working days after receipt of the Notice. The Contractor's response shall detail either:

**.1** Why they believe that the Work was performed in accordance with the Contract Documents, or,

**.2** What corrective action they intend to take, at their sole expense, to correct the non-conforming Work.

**.4** Each Contractor agrees to resolve all Notices of Non-Compliance to the satisfaction of both the Architect and Construction Manager.

**.1** Each Contractor must resolve any open Notices of Non-Compliance in order to receive their Final Payment.

**.2** No Proposed Change Orders shall be approved where a related Notice of Non-Compliance is unresolved.

**.3** Owner reserves the right to withhold monies from retainage and/or specific line items on the Schedule of Values for any unresolved Notices of Non-Compliance.

### **§4.3 CLAIMS AND DISPUTES**

**§4.3.1** Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim. The Owner is not required to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. No claims shall be allowed for conditions, which, while not directly visible, are readily inferable based on visible conditions.

**§4.3.2** Decision of Architect. Claims, including those alleging an error or omission by the Construction Manager or Architect, but excluding those arising under §10.3, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to litigation of all Claims (unless the parties agree to some other methodology) arising prior to the date Final Payment is made, unless Thirty (30) Days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect.

**§4.3.3** **Time Limits on Claims.** The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this §4.3.3.

**§4.3.4** 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.

**§4.3.5** Claims for Concealed or Unknown Conditions: Subject to Contractor obligations pursuant to §3.2, if conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the Construction Manager and Architect promptly before conditions are disturbed and in no event later than Ten (10) Days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the Site are not materially different, no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by Contractors in opposition to such determination must be made within Ten (10) Days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to §4.4.

**§4.3.6** Claims for Additional Cost.

**.1** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under §10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

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

**§4.3.7** Claims for Additional Time.

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

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

**§4.3.8** Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within

a reasonable time not exceeding Ten (10) Days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in §4.3.6 or §4.3.7.

**§4.3.9** Notwithstanding any provision of §4.3 to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work that is not in accordance with the requirements of the Contract Documents, that would not be visible or apparent upon conducting a reasonable investigation, or that should have been discovered during inspection of the Work, and that is not discovered by the Owner until after the date which, but for this §4.3.9, would be the date of commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by the Owner.

#### **§4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**§4.4.1** The Architect will review Claims and take one or more of the following preliminary actions within Ten (10) Days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

**§4.4.2** If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

**§4.4.3** If a Claim has not been resolved, the party making the Claim shall, within Ten (10) Days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

**§4.4.4** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within Seven (7) Days, which decision shall be final and binding on the parties but subject to litigation unless an alternative form of dispute resolution is agreed to by the Owner in writing. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§4.4.5** Disputes arising under §4.3 shall be subject to litigation, unless an alternative form of dispute resolution is approved by the Owner and HHAC in writing.

**§4.4.6** Pending final resolution of a Claim as provided in Article 4, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

### **ARTICLE 5 SUBCONTRACTORS**

#### **§5.1 DEFINITIONS**

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

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

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

**§5.2.1** Unless otherwise stated in the Contract Documents or the Bidding requirements, no part of Contractor's Work may be performed by subcontractors without the Owner's written approval. Names of proposed Subcontractors and suppliers for subcontracts or purchases exceeding \$5,000 shall be furnished to the Owner at least one week prior to execution of the Subcontract. The Owner may request pertinent information concerning subcontractors' ability or qualifications, business relationships, and nondiscrimination and Women/Minority Business status. The Contractor or Subcontractor shall furnish such information in ample time to avoid delay in the Work and prior to execution of the Subcontract. Failure to provide the requested information shall constitute a reasonable objection for the purposes of Article 5.2

**§5.2.2** Unless otherwise stated in the Contract Documents or the Bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager will promptly reply to the Contractor in writing stating whether the Owner, Construction Manager or Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall not automatically constitute notice of no reasonable objection.

**§5.2.3** The Contractor shall not contract with any proposed person or entity to whom the Owner, Construction Manager or Architect has made a reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§5.2.4** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall promptly propose another to whom the Owner, Construction Manager or Architect has no reasonable objection.

**§5.2.5** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such change.

**§ 5.3 SUBCONTRACTS RELATIONS**

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

Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§5.3.2** The retainage held by the Contractor from any Subcontractor shall not exceed 5% of the Subcontractor's payment application if the Subcontract provided Contractor with performance and payment bonds in the full amount of the Subcontract. If such bonds were not required or provided, then retainage may not exceed 10% of the Subcontractor's payment application. Notwithstanding the foregoing, all subcontractor retainage must comply with current New York laws governing such retainage, at the time of the payment application.

#### **§5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§5.4.1** Each Subcontract shall also provide for the following: In the event of the Contractor's termination by the Owner, the Contractor, at Owner's discretion, shall assign to the Owner all of its interest in any subcontracts and purchase orders entered into by the Contractor for performance of any part of the Work, which assignment will be effective only upon acceptance in writing by the Owner and only as to those subcontracts and purchase orders which the Owner specifically designates in such writing.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS**

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

**§6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, (which include persons or entities under separate contracts not administered by the Construction Manager), and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site. The Contractor may not claim that additional cost is involved because of such action by the Owner.

**§6.1.2** When the Owner performs construction or operations with the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

#### **§6.2 MUTUAL RESPONSIBILITY**

**§6.2.1** The Contractor shall provide the Owner's own forces, the Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate its construction and operations with Owner's forces, Construction Manager and other Contractors as required by the Contract Documents or the Construction Manager.

**§6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's own forces or other Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not reasonably discoverable prior to performance of Contractor's Work.

**§6.2.3** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to other Contractors because of delays, improperly timed activities or defective construction by the Contractor.

**§6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to any

completed or partially completed construction or to any property of the Owner or other Contractors as provided in §10.2.5.

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

### **§6.3 OWNER'S RIGHT TO CLEAN UP**

**§6.3.1** If a dispute arises among the Contractor, other Contractors and the Owner as to the responsibility under their respective Contracts for clean up under §3.15, the Owner may clean up and the Architect will allocate the cost among those responsible as the Construction Manager, in consultation with the Architect, determines to be just. Upon giving written notice, such cost shall be deducted from the next payment request.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§7.1 GENERAL**

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

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

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

**§7.1.4** All Change Orders shall be paid at prevailing wage rates and any supplements applicable to the Project at the time such Work is performed. Rates must be approved by the Construction Manager in accordance with the Contract Documents.

### **§7.2 CHANGE ORDERS**

#### **§7.2.1 PROCESS:**

- .1** First, a Proposed Change Order (PCO) must be submitted to the Construction Manager or issued by the Construction Manager and signed for approval by both the Contractor and Construction Manager.
- .2** Second, a Change Order Request (COR) must be issued by the Construction Manager and signed for approval by both the Architect and the Construction Manager.
  - .1** A COR shall only be issued if the corresponding PCO has been approved.
  - .2** Approval of a COR does not imply or guarantee that a CO shall be approved.
- .3** Third, a Change Order (CO) must be issued by the Construction Manager and signed for approval by the Architect, Contractor, and Owner.

- .1 A CO shall only be issued if the corresponding COR has been approved.
- .2 The CO must also be processed through the Owner's contract approval system and executed by the County Executive.
- .3 An approved CO is required for i) Work to be paid for out of available Contingencies, ii) Work to be paid for by an increase or decrease in the Contract Sum.
- .4 Forms for PCOs, CORs and COs shall be provided by the Construction Manager.
- .5 Final drafts of CORs and COs shall be prepared by the Construction Manager for the required approvals.
- .6 Change Orders will not include any time for Contractor's supervision i.e.: Project Manager, Assistant Project Manager, Superintendent, Foreman, General Foreman or assistant Superintendent.

**§7.2.2 PROPOSED CHANGED ORDERS (PCOS):**

- .1 The purpose of a PCO is to: (a) determine cause of the request and (b) determine if it represents a potential change in the scope of Work as described in the Contract Documents. For a PCO to be approved, it must be signed by both the Contractor and Construction Manager.
- .2 Construction Manager Initiated PCOs:
  - .1 The Construction Manager may initiate changes by submitting a PCO to Contractor. Request will include:
    - .2 Detailed description of the change, products, and location of the change in the Project.
    - .3 Supplementary or revised Drawings and Specifications.
    - .4 The projected time span for making the change and a specific statement as to whether overtime Work is, or is not, authorized.
    - .5 A specific period of time during which the requested price will be considered valid.
    - .6 Such request is for information only and is not an instruction to execute the changes, nor to stop Work in progress.
    - .7 If a Contractor does not respond to a PCO request from the Construction Manager within the 48-Hour time frame, the Construction Manager may solicit quotes from others and back charge said Contractor for all expenses associated with preparation of those quotes.
    - .8 Any costs and delays attributed to lack of response by a Contractor shall be back-charged to said Contractor.
- .3 Contractor Initiated PCOs:

Contractor may initiate changes by submitting a PCO to the Construction Manager containing:

  - .1 Description of the proposed changes.

- .2 Statement of the reason for making the changes.
- .3 Statement of the effect on the Contract Sum and the Contract Time. No adjustment to the Contract Sum will be allowed solely for adjustment to Contract Time.
- .4 A detailed estimate which shall include:
  - .1 labor with Pre-Approved Labor Rates;
  - .2 itemized material requirements with supporting documentation from the supplier(s);
  - .3 itemized equipment with supporting documentation from the rental company;
  - .4 itemized breakdown from any Subcontractors;
  - .5 statement of the effect on the Work of separate Contractors, including an explanation of how this PCO impacts the most recent Master Schedule, if at all. If no indication of schedule impact is provided, the Construction Manager shall reasonably understand the PCO does not impact the Master Schedule or require a change to the Contract Time.
  - .6 a specific time period during which the requested price will be considered valid; and
  - .7 documentation supporting any change in Contract Sum or Contract Time, as appropriate.
  - .8 The Contractor must submit a PCO within forty-eight (48) hours of recognition of a potential change in scope for it to be valid. Failure to notify the Construction Manager within this time period shall provide basis for non-approval.
  - .9 Failure of the Construction Manager to respond within the 48-hour period shall be deemed non-approval of the PCO, unless the Construction Manager has requested additional time for review.
  - .10 All PCOs must be responded to within 48-hours of issuance unless noted otherwise; however, additional time for review may be requested within that 48-hour period.
  - .11 No PCOs shall be approved where a related Notice of Non-Compliance is unresolved.

**§7.2.3 CHANGE ORDER REQUESTS (CORS):**

- .1 Following approval of a PCO and issuance of a COR by the Construction Manager, the Architect and Construction Manager shall review the COR to determine (a) if it represents a compensable change to the Contractor's Scope of Work as described in the Contract Documents and, (b) if the cost is reasonable and accurate in its allocation.
- .2 For a COR, the Contractor shall provide additional and sufficient substantiating data to allow the Architect and Construction Manager to evaluate the quotation.
- .3 On request, provide additional data to support time and cost computations, including, but not limited to:
  - .1 support for each quotation for a Lump Sum proposal and for each Unit Price which has not previously been established;

- .2 equipment required;
  - .3 products required;
  - .4 recommended source of purchase and Unit cost;
  - .5 quantities required;
  - .6 taxes, insurance and bonds; (only if it exceeds total Contract Sum)
  - .7 credit for Work deleted from Contract, similarly documented
  - .8 overhead and profit; and
  - .9 justification for any change in Contract Time.
- .4 Support each claim for additional costs and for Work done on a time-and-material/force account basis, with documentation as required for a Lump Sum proposal, plus additional information; including, but not limited to:
- .1 name of the Owner's authorized agent who ordered the Work and date of the order;
  - .2 dates and times Work was performed and by whom;
  - .3 Time record, summary of hours worked and hourly rates paid
- .5 Provide receipts and invoices for:
- .1 equipment used, listing dates and times of use;
  - .2 products used, listing quantities;
  - .3 subcontracts; and
  - .4 document requests for substitutions for products.
- .6 Methods used in determining adjustments to the Contract Sum may include those listed in §7.3.3.

**§7.2.4 CHANGE ORDERS (COS):**

- .1 Approved COs are required for any additional Work to be paid for out of a Contingency and any additional Work that shall equitably adjust the Contract Time and/or the Contract Sum by amounts as set forth in approved CORs.
- .1 COs describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change.
  - .2 COs provide an accounting of the adjustment in the Contract Sum and in the Contract Time.
- .2 In order for a CO to be approved, both a PCO and a COR and must have been previously signed by the Contractor, Construction Manager, Architect, HHAC and Owner for approval.

- .3 Upon approval of a CO, the Contractor shall:
  - .1 Proceed with the Work within Five (5) Days unless otherwise noted on the CO.
  - .2 Revise Applications for Payment to record each change as a separate item of Work, and to record the adjusted Contract Sum.
  - .3 Revise and submit a Draft Construction Schedule to reflect each change in Contract Time.
- .4 Revise sub-schedules to show changes for other items of Work affected by the changes.
- .5 Enter pertinent changes in Record Documents.

**§7.2.5 UNIT PRICE BASED CHANGE ORDERS:**

- .1 When quantities of each of the items affected cannot be determined prior to start of the Work:
  - .1 The Contractor shall establish a not-to-exceed budget amount and a PCO shall be approved for this amount.
  - .2 The Construction Manager shall issue a Construction Change Directive directing Contractor to proceed with the change on the basis of Unit Prices and will cite the applicable Unit Prices.
  - .3 At completion of the Work, Contractor will calculate the cost of such based on the Unit Prices and quantities used and provide such documentation to the Construction Manager.
  - .4 A corresponding COR shall be issued to indicate the final amounts.

**§7.2.6 ALLOWABLE MARKUPS: NOTE: For Contingency based Work, costs of overhead and profit and related administration, bond, coordination, insurance and superintendence shall be included in the Lump Sum(s) indicated on the Bid Form. **Markups and costs for such items shall not be allowed or included in calculating Change Orders funded out of the Contingency.****

- .1 Equipment in COR's: Equipment rental rates shall be billed at 80% of the Blue Book Rental Rate with no markup.
- .2 Other mark-ups allowed for COR's, as follows:
  - .1 Self Performance of CO Work by a Contractor
  - .2 Labor Markup: 5%
  - .3 Material Markup: 5%
- .3 Performance of CO Work by Subcontractors and/or Sub-Subcontractors:
  - .1 Contractor's Markup on Subcontractor: 5% of Subcontractor's labor and materials totals prior to any Subcontractor or Sub-Subcontractor markups (Subcontractors labor and material totals may include sub-subcontractor labor and materials without any markup)
  - .2 Subcontractor's Labor Markup: 5%

.3 Subcontractor's Material Markup: 5%

.4 Subcontractor's Markup on First Tier Sub-Subcontractors only: 5% of Sub-subcontractor labor and materials totals prior to any Sub-Subcontractor markups (No markups for lower tier Sub-Subcontractors will be accepted.)

.4 Labor in all Change Orders shall be at Prevailing Wage Rates and any supplements applicable to the Project at the time such Work is performed.

### **§7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§7.3.1** A Construction Change Directive (CCD) is a written order to the Contractor, signed by Owner and Architect, which amends the Contract Documents as described and authorizes the Contractor to proceed with additional Work in the absence of a total agreement in terms of a PCO, COR and/or CO. The Owner, without invalidating the Contract, may, by a CCD issued through the Construction Manager, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. The Contractor agrees that they are required to perform the Work of a CCD with reasonable and timely means and methods without the issuance of a COR and/or CO.

#### **§7.3.2 PROCEDURE FOR CCD:**

.1 The CCD will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change and will designate the method of determining any change in the Contract Sum and any change in Contract Time.

.2 Owner and Architect will sign and date the CCD as authorization for the Contractor to proceed with the changes.

.3 Contractor may sign and date the CCD to indicate agreement with the terms therein.

.4 The Construction Manager agrees to approve a PCO within Ten (10) Days of issuance of the CCD.

.5 Resolution of a CCD into a CO shall follow the process outlined under 'Change Order Procedures' as described in these Supplemental Conditions.

.6 A CCD form shall be provided by the Construction Manager.

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

.1 mutual acceptance of a Lump Sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit Prices stated in the Contract Documents or subsequently agreed upon; or

.3 as provided in §7.3.6.

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

**§7.3.5** A CCD signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be processed as a Change Order.

**§7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Construction Manager on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable amount for overhead and profit to be approved by the Owner and the HHAC. In such case, and also under §7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this §7.3.6 shall be limited to the following all as related and necessary to the performance of the Work:

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

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

**§7.3.8** If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Construction Manager for determination.

**§7.3.9** When the Owner and Contractor agree with the determination made by the Construction Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### **§7.4 FIELD ORDERS**

**§7.4.1** The Architect will have authority, after consulting with the Owner and Construction Manager, to memorialize trade-off agreements and/or 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 affected by a written Field Order on forms provided by and issued through the Construction Manager and signed by the Architect, Owner, Contractor and Construction Manager.

**§7.4.2** Field Orders shall be binding on the Owner and Contractor.

**§7.4.3** The Contractor shall carry out Field Orders promptly.

**§7.4.4** Under no circumstances shall a minor change in the Work result in an increase in the Contract Sum or the Contract Time.

**§7.5 OMITTED WORK**

**§7.5.1** If any Work in a Lump Sum Contract, or if any part of a Lump Sum item in a Unit Price, Lump Sum, or Percentage-Bid Contract is omitted by the Owner, the Contract Sum, subject to audit, shall be reduced by a pro rata portion of the Lump Sum Bid amount based upon the percent of Work omitted subject to §7.5.4. For the purpose of determining the pro rata portion of the Lump Sum Bid amount, the Schedule of Values shall be considered, but shall not be the determining factor.

**§7.5.2** If the whole of a Lump Sum item or Units of any other item is omitted by the Owner in a Unit Price, Lump Sum, or Percentage-Bid Contract, then no payment will be made therefore except as provided in §7.5.4.

**§7.5.3** For Units that have been ordered but are only partially completed, the Unit Price shall be reduced by a pro rata portion of the Unit Price Bid based upon the percentage of Work omitted subject to §7.5.4.

**§7.5.4** In the event the Contractor, with respect to any omitted Work, has purchased after execution of this Agreement and in accordance with the Master Schedule if such purchase is specified therein, any non-cancelable material, equipment, or both that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract, but not yet incorporated into the Work, the Contractor shall be paid for the material or equipment. Such payment is contingent upon the Contractor's delivery of the material or equipment in acceptable condition to a location designated by the Owner.

**§7.5.5** The Contractor agrees to make no claim for damages or for loss of overhead and profit with regard to any omitted Work.

**ARTICLE 8 TIME**

**§8.1 DEFINITIONS**

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

**§8.1.2** The date of commencement of the Work is the date established in §5.1 of the Agreement.

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

**§8.2 PROGRESS AND COMPLETION**

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

**§8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than Five (5) Days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and

other security interests.

**§8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the Contract Time. The Contractor shall notify the Owner and the Architect in writing within three days of the occurrence of any situation within or beyond the Contractor's control, which may delay the completion of the Work, and shall submit with such notification recommendations for avoiding or minimizing the delay.

**§8.2.4** The Owner shall have the right, if it deems it necessary or advisable, to take possession of or use any completed or partially completed portions of the Work even if the time for completing the entire Work has not expired and even if the Work has not been finally accepted. Such possession and use shall not constitute an acceptance or completion of such portions of the Work unless all Punch List items have been completed and accepted by the Owner. Use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of its responsibility to maintain all insurance and bonds required by the Contract Documents until the Project is fully completed and accepted by the Owner.

### **§8.3 DELAYS AND EXTENSIONS OF TIME**

**§8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Construction Manager or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by other causes which the Architect, Construction Manager, Owner, and the HHAC determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect, Owner, Construction Manager and the HHAC may determine. The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the Owner, Construction Manager or Architect or of a separate contractor employed by the Owner, or by changes ordered in the Work, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work as provided herein.

**§8.3.2** If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner's own forces; Construction Manager; Architect; DASNY; the HHAC; any of the other Contractors or an employee of any of them; changes ordered in the Work not due any act or omission in whole or in part of Contractor or its employees; fire; adverse weather conditions as hereinafter described; unavoidable casualties, pandemic, or any other causes beyond the Contractor's reasonable control (but not including delays caused by Subcontractors or material suppliers for reasons other than those which are beyond the control of such Subcontractors or material suppliers), then the date(s) established for Substantial Completion and Final Completion shall be extended by Change Order for a period not exceeding the length of such delay. Such extension shall not be considered unless, promptly after the commencement of any such delay, the Contractor delivers to the Construction Manager, Architect and Owner a written notice of such delay stating the nature thereof and the manner and cost of the action to be taken by Contractor to remedy the delay, with a written request for an extension of the Substantial Completion or Final Completion Date(s) by reason of such delay. Failure to deliver any such notice or request promptly shall constitute an irrevocable waiver of any extension of the Substantial Completion and Final Completion Date(s) by reason of the cause for which such notice and request were required. Claims relating to an extension of the Contract Time will be resolved in accordance with the applicable provisions of §4.3 and §4.4.

**§8.3.3** Adverse Weather. No application for an extension of time may be made for adverse weather unless or until the Contractor has lost workdays due to adverse weather conditions that materially affect the Master Schedule and the dates of Substantial Completion or Final Completion. Such requests shall only be made for the delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten-year average for the month in question as evidenced by Climatological Data, U.S. Department of Commerce, which includes the State of New York.

**§8.3.4** Notwithstanding anything to the contrary in this §8.3, no delay or combination of delays for any cause, whether or not permitted under §8.3.1, other than a major natural, environmental or manmade catastrophic event which directly affects the Project (such as, for example, tornado, earthquake or other condition causing the Project Site to be declared a Disaster Area by the Federal or state government), shall in any event extend the date for Final Completion as defined in this Contract. In the event of any unpermitted delay, in addition to and without prejudice to any other remedies of the Owner, the Contractor shall pay to the Owner upon demand (and the Owner shall be entitled, if the Owner so elects, to offset from any amount payable to the Contractor) the applicable amount of any Liquidated Damages in accordance with the Liquidated Damages provision of the Agreement.

**§8.3.5** Extension of Contract Time shall be the Contractor's sole remedy for delay, unless the same shall have been caused by facts constituting intentional interference by the Owner with the Contractor's performance of the Work, and where and to the extent such acts continue, after the Contractor's notice to the Owner of such interference. The Owner's exercise of any of its rights or remedies hereunder, the execution of Change Orders (regardless of the extent or number of changes), a suspension of the Work or correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with the Contractor's performance of the Work.

**§8.3.6** This Section 8.3 does not preclude the Owner from seeking recovery of damages for delay under other provisions of the Contract Documents. Failure by the Contractor to diligently prosecute the Work according to the Contract Documents shall constitute grounds for termination under Section 13.2.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§9.1 EXECUTORY CLAUSE**

**§9.1.1** The Owner shall not be liable under this Contract to Contractor or to anyone else beyond funds appropriated and available for this Contract.

### **§9.2 CONTRACT SUM**

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

### **§9.3 SCHEDULE OF VALUES**

**§9.3.1** Before the first Application for Payment, the Contractor shall submit to the Architect, through the Construction Manager, a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This Schedule of Values, unless objected to by the Construction Manager, Architect, Owner or HHAC shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values and supporting data shall be submitted to the Owner as soon as possible after the execution of the Contract (but no later than the submission of the Contractor's first Application for Payment) and shall be in a form acceptable to the Owner.

### **§9.4 APPLICATIONS FOR PAYMENT**

**§9.4.1** All Applications for Payment shall be on the AIA G702CMA Application and Certificate for Payment with signature lines for both the Architect and Construction Manager. Continuation sheets shall be on AIA G703. Line item categories listed on G703 shall be the same as the approved Schedule of Values.

**§9.4.2** Pencil (draft) Requisitions.

- .1 The Contractor's "pencil (draft) requisition" shall be submitted to the Construction Manager and Architect on or before the 25<sup>th</sup> Day of each month but no later than the last Day of the month for anticipated completion of the Work for the end of that month. A complete pencil requisition shall be defined as a proposed requisition that includes:
  - .1 a cover sheet with all subtotals and a grand total.
  - .2 additional sheets with line item breakdowns, proposed percentages for all line items, and totals for all columns;
- .2 Construction Manager and Architect reserve the right to return any incomplete pencil (draft) requisition to the Contractor without review.
- .3 Construction Manager and Architect shall review the pencil (draft) requisition in a timely manner.
- .4 If revisions are required, the Contractor shall be responsible to revise and resubmit the pencil (draft) requisition for final approval.
- .5 Change Orders shall be listed as separate, individual line items with corresponding percent complete. If the Change Order is to be paid for out of Contingency, list the Change Order as a separate line item under the Contingency.

**§9.4.3** Ink (final) Requisitions shall include:

- .1 Two (2) original copies of the AIA requisition, signed in blue ink and notarized
- .2 One (1) original signed in blue ink, and two (2) copies of each of the following:
  - .1 Completed Payment Application Checklist form as provided by the Construction Manager.
  - .2 Claimant Certification Form as provided by the Owner.
  - .3 Contractor Partial Release and Waiver of Lien (Final/Last) on form provided by the Construction Manager. This Waiver shall cover all payments received up to and including the period one (1) month prior. Final Waiver is required for payment.
  - .4 Waivers of Lien, AIA G705 Contractor's Affidavit of Payment of Debts and Claim AIA G706, and AIA G706A Contractor's Affidavit of Release of Liens must be submitted with each Application for Payment. This Waiver shall cover all payments received up to and including the period one (1) month prior. Final Waiver is required for payment.
  - .5 Certified Payroll Reports for all payments received up to and including the period one (1) month prior.
  - .6 Log of all Waivers submitted job-to-date on form provided by Construction Manager.
  - .7 Log of all Certified Payroll Reports submitted job-to-date on form provided by Construction Manager.
  - .8 Certificates of Insurance for all off site stored materials listing:

- .1 Location of off-site material stored.
  - .2 Owner as Additional Insured: County of Orange, c/o, Department of Public Works, PO Box 509, 2455-2459 Route 17M, Goshen, NY 10924,
  - .3 Construction Manager as Additional Insured: Key Construction Services, 327-329 Main St., Poughkeepsie, NY 12601.
  - .4 Architect as Additional Insured: Lothrop Associates LLP, Architects, 333 Westchester Ave., White Plains, NY 10604.
  - .9 Batch and/or delivery tickets for any concrete products poured, fill or debris hauled, or similar items transported during the month for which the Payment Application represents.
  - .10 Monthly progress schedule updates.
  - .11 Monthly progress photographs.
  - .12 The Architect may require such other documents deemed necessary.
- .3 Ink (final) requisitions shall be submitted to Owner for processing only after the Construction Manager and Architect determine the Ink Requisition packages to be accurate and complete.

**§9.4.3** Such applications may not include requests for payments of amount the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

**§9.4.4** All Notices of Non-Compliance must be resolved to the satisfaction of the Architect and Construction Manager before the Application for Final Payment shall be accepted for review.

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

**§9.4.6** On or about Thirty (30) Days following the Architect's submission of a Certificate for Payment, provided the Contractor has submitted its Application for Payment and supporting documentation in the manner and detail required by the Contract Documents, the Owner shall make payment to the Contractor in the amount approved as aforesaid. The payment of any Certificate for Payment by the Owner, including the final Certificate for Payment, does not constitute approval or acceptance of any item of cost in such Certificate for Payment. The Owner shall have the right to require the payment to Subcontractors by the Contractor to be in the form of a joint payee check, payable to the Contractor and Subcontractor.

**§9.4.7** Within Thirty (30) Days after Final Completion of the Work, or designated portion thereof approved by the Owner, and acceptance thereof by the Owner, or as soon thereafter as possible, Contractor shall submit a final application for payment ("Final Application for Payment") Which shall set forth all amounts due and remaining unpaid to Contractor with respect to the Work or designated portion thereof and upon issuance by the Architect of a final Certificate for Payment and approval thereof by the Owner, the Owner shall pay to the Contractor the amount due under such Final Application for payment. Anything to the Contrary contained herein or elsewhere

notwithstanding, Final Payment shall not be made prior to Thirty (30) Days following Final Completion of the Work or designated portion thereof.

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

**§9.4.9** The Contractor shall within Fifteen (15) Days after receipt of notice of the existence of any lien filed against the Project by any Subcontractor, supplier or materials or any other person or entity claiming to be a creditor of the Contractor, cause the same to be removed as of record and/or fully bonded at the Contractor's sole cost and expense. Any payment due to the Contractor hereunder shall be reduced by an amount equal to up to one hundred and fifty percent (150%) of the amount of any lien arising out of or related to Contractor's performance under this Contract until such lien is discharged to the Owner's reasonable satisfaction.

## **§9.5 CERTIFICATES FOR PAYMENT**

**§9.5.1** The Construction Manager will assemble a Project Application for Payment by combining the Contractor's applications with similar applications for Progress Payments from other Contractors and, after certifying the amounts due on such applications, forward them to the Architect within Seven (7) Days.

**§9.5.2** Within Seven (7) Days after receipt of the Project Application for Payment, the Construction Manager and Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Contractor, for such amount as the Construction Manager and Architect determine is properly due, or notify the Contractor and Owner in writing of the Construction Manager's and Architect's reasons for withholding certification in whole or in part as provided in §9.6. Such notification shall be forwarded to the Contractor by the Construction Manager.

**§9.5.3** The issuance of a separate Certificate for Payment or Project Certificate for Payment will constitute representations made separately by the Construction Manager and the Architect to the Owner, based on their individual observations at the Site and the data comprising the Application for Payment submitted by the Contractor, that the Work has progressed to the point indicated and that, to the best of the Construction Manager's and Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager or Architect-. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a separate Certificate for Payment or Project Certificate for Payment will not be a representation that the Construction Manager or Architect has

- .1 made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work,
- .2 reviewed the Contractor's construction means, methods, techniques, sequences or procedures,
- .3 made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum, or
- .4 in the case of the Architect, reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment.

## **§9.6 DECISIONS TO WITHHOLD CERTIFICATION**

**§9.6.1** The Construction Manager or Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager or Architect's opinion the representations to the Owner required by §9.5.3 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager or Architect will notify the Contractor and Owner as provided in §9.5.1. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Construction Manager and Architect will promptly issue a Certificate for Payment for the amount for which the Construction Manager and Architect is able to make such representations to the Owner.

The Construction Manager or Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract sum;
- .5 damage to the Owner or another 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 persistent failure to carry out the Work in accordance with the Contract Documents.

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

## **§9.7 PROGRESS PAYMENTS**

**§9.7.1** After the Construction Manager and Architect have issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, subject to the terms of the HHAC Agreement, and shall so notify the Construction Manager and Architect.

**§9.7.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Any such Subcontractor or Sub-Subcontractor shall be required to submit a full or partial release or waiver of lien relevant to that portion of the Work for which payment is sought.

**§9.7.3** The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect and on account of portions of the Work done by such Subcontractor.

**§9.7.4** Contractor shall pay all Subcontractors and suppliers within Seven (7) Days of receipt of payment from Owner (or such other time period as may be provided by General Municipal Law §106-b as amended), representing the value of the Work performed and/or materials furnished by the Subcontractor and/or supplier and reflecting the percentage of the Subcontractor's Work completed or the materials provided by supplier in the requisition approved by the Architect and accepted by the Construction Manager and Owner and based upon the actual value of the Subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the Subcontractor or supplier which have not been suitably discharged and less any retained amount not in excess of the percentage requirements specified in Article 7 of the Agreement. Neither the Owner, Construction Manager, nor Architect, shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by Law.

**§9.7.5** Payment to material suppliers shall be treated in a manner similar to that provided in §9.7.2 through §9.7.4.

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

**§9.7.7** Payments due and unpaid under the Contract shall bear Zero percent (0%) interest from the date payment is due.

## **§9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial completion shall occur when all of the following conditions are satisfied:

- .1** The applicable Government Entity has issued one or more temporary Certificate(s) of Occupancy covering the whole of the Project;
- .2** All utilities specified or required under the Contract Documents are connected and functioning properly;
- .3** Owner can use and/or occupy the Project for the intended use and purpose;
- .4** A Master Punch List has been issued per §9.8.2;
- .5** All Work, excepting the items on the Punch List and the Close-out Requirements, is complete in all respects in compliance with the Contract Documents;
- .6** Contractor has delivered to Owner a Claims Statement setting forth in detail all Contractor's claims against Owner connected with, or arising out of, this Contract or the Work and arising out of or based on events prior to the date when Contractor gives such statement to Owner;
- .7** Contractor has agreed in writing that Contractor will achieve Final Completion on a specified date (which shall be no later than sixty (60) days after the date of Substantial Completion);
- .8** Contractor has delivered to Owner all required operating manuals and manufacturer's (or Subcontractor's) warranties; and

**.9** Contractor has submitted to Owner written certification that all of the foregoing conditions have been satisfied; or

**.10** Alternatively, Substantial Completion shall occur on any date certified by Owner, who shall have discretion to waive any of the foregoing conditions.

**§9.8.2** When the Construction Manager is able to randomly survey an area of the Project and determine that less than three (3) deficiencies on average remain in every room seen, at the request of Contractor, the Construction Manager shall initiate the Punch List process by requesting a list of deficiencies for that area from Contractors, Architect, Construction Manager and Owner. These lists shall be compiled by the Construction Manager into a Master Punch List. Contractors, Architect, Construction Manager, and Owner can add items to the Master Punch List at any time. The Construction Manager will provide rolling updates to the Master Punch List to the Contractor on a floor-by-floor basis as often as deemed necessary by the Architect and/or the Construction Manager. Failure to include an item on the Master Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§9.8.3** The Contractor will have no longer than Ten (10) Days to address and complete the Punch List items. If the Contractor requires more than Ten (10) Days to complete a Punch List item, the Contractor shall notify the Construction Manager of the required time within the Ten- (10-) Day period described above.

**§9.8.4** Agreement by the Architect and Owner is required to close-out Punch List items. The Contractor shall inform the Construction Manager when the Punch List Items for an area are complete. The Construction Manager will review all open Punch List items for that area and determine if they are ready for review by the Architect and Owner for close-out. If any items remain open after the Construction Manager's review:

**.1** The Construction Manager may solicit quotes from others to complete the open Punch List Work and back-charge the Contractor for all expenses associated with preparation of those quotes and completion of the Work; and

**.2** The Owner reserves the right to retain twice the value, as determined by the Construction Manager, of any incomplete Punch List items.

**§9.8.5** Before an inspection for Substantial Completion, Contractor must complete the Preliminary Procedures and Requirements for Substantial Completion listed in the Specifications. If the Architect's inspection discloses any item, whether or not included on the Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. If the Contractor fails to complete open items, the provisions of §9.8.4 shall apply.

**§9.8.6** When the Work or designated portion thereof is Substantially Complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the Punch List accompanying the Certificate. The Contractor shall complete all Punch List Work as required with no additional cost to the Owner. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§9.8.7** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of

surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§9.9 PARTIAL OCCUPANCY OR USE**

**§9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required by §9.9.3 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a list to the Architect as provided under §9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, then by decision of the Architect after consultation with the Construction Manager.

**§ 9.9.2** In the event that the Owner partially occupies the building(s), the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the Site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Payment has been made as provided in §9.10 or until no person or entity other than the Owner has an insurable interest in the property required to be covered by this §9.9, whichever is later.

This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Owner reserves the right to self-insure its interests as they may be in the Project and as they may appear in the Contract Documents.

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

**§9.9.4** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

## **§9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt the Construction Manager will forward the notice and

Application to the Architect who will promptly make such inspection. When the Architect, Owner, and the HHAC, based on the recommendation of the Construction Manager, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a Final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the Final Certificate is due and payable. The Construction Manager and Architect's Final Certificate for Payment will constitute a further representation that conditions listed in §9.10.2 as precedent to the Contractor's being entitled to Final Payment have been fulfilled.

**§9.10.2** Final Inspection shall not occur and neither Final Payment nor any remaining retained percentage shall become due until the Contractor, as applicable to each Summary of Work, submits to the Architect, through the Construction Manager:

- .1 a Final Application for Payment;
- .2 certified Payrolls in accordance with New York State Labor Law §220(3-a)(iii) and all statements and verifications required by New York State Labor Law §220-a;
- .3 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, noting any outstanding claims or dispute resolutions in progress;
- .4 a certificate evidencing that insurance required by the Contract Documents is and shall remain in force and effect after Final Payment and will not be canceled or allowed to expire until at least 30 Days' prior written notice has been given to the Owner;
- .5 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .6 Completed AIA forms: G-706 Contractor's Affidavit of Payment of Debts and Claims, G706-A Contractor's Affidavit of Release of Liens (including for all Subcontractors), and G707 Consent of Surety to Final Payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees;
- .7 As-Built Drawings as required pursuant to §3.19;
- .8 a complete unconditional full and final waiver and release of liens arising out of or in connection with the Work, or designated portion thereof covered by such final Application;
- .9 other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner;
- .10 a copy of the Substantial Completion Punch List, certified as completed by the Architect;
- .11 warranties, maintenance bonds and service agreements, final certifications and similar documents;

- .12 pest control final inspection report and warranty;
- .13 demonstration and training videotapes after instructing Owner's personnel in operation, adjustment, and maintenance of products, equipment, and systems;
- .14 such data, documents, and any other items set forth in the Close-Out Requirements listed in Division 01 of the Specifications;
- .15 that the Work, or designated portion thereof, has been fully performed in accordance with the Contract Documents and all Close-Out Requirements have been resolved to the satisfaction of the Owner;
- .16 a Final Certificate of Occupancy has been issued for the Project; and
- .17 a Final Certificate for Payment has been issued by the Architect, except for 1.5% of the Contract Sum, which shall be retained as security against defects in the construction which appear within a period of one (1) year from the date of Final Completion.

**§9.10.3** Subject to the terms of the HHAC Agreement, if, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager, Architect, and HHAC and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

**§9.10.4** Owner shall pay to the Contractor the amount due under such Final Application for Payment. Anything to the contrary contained herein or elsewhere notwithstanding, Final Payment shall be made within Thirty (30) Days of submission of an invoice issuance of Final Completion of the Work or designated portion thereof.

**§9.10.5 ACCEPTANCE OF FINAL PAYMENT**

.1 The acceptance by the Contractor, or by anyone claiming by or through it, of the Final Payment, whether such payment be made pursuant to any judgment of any Court, or otherwise, shall constitute and operate as a release to the Owner from any and all claims of and liability to the Contractor for anything done or furnished for the Contractor relating to or arising out of this Contract and the Work done hereunder, and for any prior act, neglect or default on the part of the Owner or any of its officers, agents or employees, excepting only a claim against the Owner for the amounts deducted or retained in accordance with the terms and provisions of the Contract Documents or by applicable Laws, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures which are contained in the verified statement filed with the Contractor's Substantial Completion and Final Completion Applications for Payment pursuant to §9.10.2.3.

.2 The Contractor is warned that the execution by it of a release in connection with the acceptance of the Final Payment, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the Owner from the Final Application for Payment, or from the Final Payment, as certified by the Construction Manager and approved by the Owner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in

writing by any officer, agent or employee of the Owner to the contrary notwithstanding.

**.3** Payments due and unpaid under the Contract shall bear Zero percent (0%) interest from the date payment is due. Should the Contractor refuse to accept the Final Payment as tendered by the Owner, it shall constitute a waiver of any right to interest thereon.

**.4** The Contractor, however, shall not be barred from commencing an action for breach of contract under this provision to the extent permitted by Law and by the terms of the Contract, provided that a detailed and verified statement of claim is served upon the Owner not later than Forty (40) Days after the mailing of such Final Payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items. This statement shall be in addition to any other filings required by Law or by the terms of the Contract Documents in order to assert a claim or commence and prosecute an action.

## **§9.11 BOOKS AND RECORDS**

**§9.11.1** Contractor agrees to maintain separate and accurate books, records, documents, other evidence, and accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

## **§9.12 RETENTION OF RECORDS**

**§9.12.1** Contractor agrees to retain all books, records, and other documents relevant to this Contract for six (6) years after the Final Payment or termination of this Contract, whichever occurs later.

**§9.12.2** County, State, or Federal auditors, or any person duly authorized by the Owner, shall have full access to all documents relevant to this Contract and the right to examine all such documents during the retention period.

## **§9.13 AUDIT BY THE COUNTY AND OTHERS**

**§9.13.1** All Claimant Certification forms or invoices presented for payment to be made under this Contract, and all books, records, and accounts upon which the certification forms or invoices are based are subject to audit by the Owner. Contractor shall submit any and all documentation and justification in support of expenditures under this Contract as may be required by the Owner so that the Owner may evaluate the reasonableness of the charges. Contractor shall also make its records available to the Owner upon request. All books, Claimant's Certification forms, invoices, records, reports, cancelled checks, and all similar documentation may be subject to periodic inspection, review, and audit by the Owner, the State of New York, the Federal Government, or other persons duly authorized by the Owner. Such audits may include examination and review of the source and application of all funds whether from the County, State or Federal Governments; private sources; or otherwise. Contractor shall not be entitled to any Progress or Final Payments under this Contract if audit requirements or requests have not been satisfactorily met.

## **§9.14 NO CLAIM AGAINST OFFICERS, AGENTS, OR EMPLOYEES**

**§9.14.1** No claim whatsoever shall be made by the Contractor against any officer, agent, or employee of the Owner for, or on account of, anything done or omitted to be done in connection with this Contract.

## **§9.15 SET-OFF RIGHTS AND BACK CHARGES**

**§9.15.1** The Owner shall have all of its common law, equitable, and statutory rights of set-off. These rights include, but are not limited to, the Owner's right to withhold for the purpose of set-off any monies otherwise due to Contractor:

- .1 under this Contract;
- .2 under any other agreement or contract with the Owner, including any agreement or contract for a term commencing prior to or after the term of this Contract;
- .3 from the Owner by operation of Law.

**§9.15.2** The Owner has the right to withhold any monies otherwise due under this Contract for the purposes of set-off as to any amounts due and owing to the Owner for any reason whatsoever including tax delinquencies, fee delinquencies, monetary penalties, or interest relative thereto.

**§9.15.3** The Owner reserves the right to back charge a Contractor, through a Deductive Change Order, for the cost of total and complete remedy due to the failure of said Contractor to comply with any portion(s) of the Contract Documents.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§10.1.1** 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 submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

**§10.1.2** In the event the Contractor encounters on the Site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect or by litigation or other alternative form of dispute resolution approved in writing by Owner.

**§10.1.3** The Contractor shall not be required, pursuant to Article 7, to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

**§10.1.4** To the fullest extent permitted by Law, the Owner shall indemnify and hold harmless the HHAC, DASNY, Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if, in fact, the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this § 10.1.4.

**§10.1.5** The Owner shall not be responsible under §10.1.4 for materials and substances brought to the Site by the Contractor or other parties or for Contractor's or its employees, Subcontractors or others mishandling of any such hazardous materials.

**§10.1.6** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Contractor, Construction Manager and Architect shall then proceed in the same manner described in §10.1.2.

**§10.1.7** The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume.

## **§10.2 SAFETY OF PERSONS AND PROPERTY**

**§10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1** employees on the Work and other persons who may be affected thereby including, but not limited to, the Owner, Architect, delivery persons or other third parties;
- .2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .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; and
- .4** construction by the Owner or other Contractors.

**§10.2.2** The Contractor shall give notices and comply with applicable Laws bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

**§10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in §10.2.1.2 through §10.2.1.4 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 §10.2.1.2 through §10.2.1.4 caused, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts any of them may be liable. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Article 3.

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

**§10.2.7** The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

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

### **§10.3 EMERGENCIES**

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

**§10.3.2** Any removal or abatement of asbestos, PCB, or other harmful substances carried out under this Contract or any Subcontract shall be performed by qualified personnel, properly protected and supervised, in accordance with the Contract Documents and all applicable laws and regulations. If any such removal or abatement is included in the Contract Documents, the Contractor shall include the time required for such removal or abatement including all necessary approvals and inspections, and the requirements of Article 10, in preparing construction schedules.

## **ARTICLE 11 INSURANCE AND BONDING**

### **§11.1 INSURANCE**

**§11.1.1** Prior to commencing the Work through the term of the Contract, or for such other period as may be required by the Contract Documents, Contractor and Subcontractors shall purchase from and maintain in a company or companies lawfully authorized to do business in the state of New York, with an A.M. Best Rating of A- or better, insurance specified in this §11.1, and as will protect the Contractor, Subcontractor, Owner, HHAC, Construction Manager and Architect from any and all claims which may arise out of or result from the Contractor's or Subcontractor's performance under the Contract and for which the Contractor or Subcontractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

**§11.1.2** The insurance required hereunder shall be written for not less than the following amounts, or greater, if required by Law:

- .1** Workers Compensation & Disability: State Statutory Amounts
- .2** Employer's Liability: \$1,000,000 aggregate and each occurrence
- .3** Commercial General Liability (including Premises; Independent Contractor's Protective; Bodily Injury; Property Damage; Contractual Liability; and Products and Completed Operations to be maintained for two years after Final Payment): \$3,000,000 aggregate and each occurrence
- .4** Business Automobile Liability with: \$3,000,000 aggregate and each occurrence

- .5 Contractors Pollution Liability: \$1,000,000 aggregate and each occurrence
- .6 Umbrella Excess Liability: \$5,000,000, aggregate and each occurrence which may be used to fund any portion of the insurances required above.
- .7 Construction Project Management Protective Liability: \$2,000,000 aggregate and each occurrence
- .8 Insurance for Project Office: Each Contractor shall provide fire insurance, extended coverage and vandalism, malicious mischief and burglary, and theft insurance coverage for their Project office spaces and contents in the amount of no less than \$100,000.
- .9 If the Work involves disposal of hazardous materials, the Contractor shall dispose of such materials only at sites where the disposal site is properly permitted and the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least \$2,000,000 for losses arising from such disposal site.

**§11.1.3** Coverage listed in this §11.1, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after Final Payment. Claims-made policies shall be maintained for Three (3) Years from the date of Final Payment. If the Contractor fails to purchase or maintain or require to be purchased and maintained the liability insurance specified by Article 11 of the General Conditions, the Owner may (but shall not be required to) purchase such insurance on the Contractor's behalf and shall be entitled to be repaid for any premiums paid therefor by the Contractor.

**§11.1.4** Contractors and Subcontractors, within Ten (10) Days of the date of Notice of Award, shall supply the Owner with a Certificate(s) of Insurance, evidencing compliance with the minimum requirements listed above and shall within Thirty (30) Days thereafter furnish Owner with certified copies of the policies. The certificates and the insurance policies required by this §11.1.4 shall contain a provision that coverage will not be canceled or allowed to expire until at least Thirty (30) Days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after Final Payment, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment as required by the Contract Documents. Information concerning reduction of coverage on account of revised limits or claims paid under occurrence, aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**§11.1.5** With the exception of Workers Compensation, Disability and Professional Liability, Contractors and Subcontractors shall have the Owner, HHAC, DASNY, Construction Manager and Architect each added as an additional insured to all policies. The insurance policies shall be endorsed to indicate that they are primary with respect to the Owner, HHAC, DASNY, Construction Manager and Architect and not contributory with any other insurance available to either of those parties. Each policy shall contain the following cross liability provision.

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

**§11.1.6** Waivers of Subrogation: Contractors and Subcontractors waive all claims, losses, damages, or expenses against the Owner, Construction Manager, Architect, their agents, employees, consultants and separate Contractors, if any, from risks actually insured. The policies shall provide such waivers of subrogation by endorsement or otherwise.

**§11.1.7** In accordance with New York State General Municipal Law §108 this Contract shall be void and of no effect unless the person or corporation making or performing such Contract shall secure compensation for the

benefit of, and keep insured during the life of such Contract, such employees, in compliance with the provisions of the New York State Workers' Compensation Law.

**§11.1.8** The Contractor shall not commence Work unless and until all required certificates have been submitted to and accepted by the Owner. Acceptance by the Owner of a certificate hereunder does not excuse the Contractor from securing a policy consistent with all provisions of this Article or of any liability arising from its failure to do so.

**§11.1.9** The Contractor shall be responsible for providing continuous insurance coverage in the manner, form and limits required by this Contract and shall be authorized to perform Work only during the effective period of all required coverage.

**§11.1.10** In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Owner. Upon quitting the Site, except as otherwise directed by the Owner, the Contractor shall leave all plant, materials, equipment, tools and supplies on the Site. Contract Time shall continue to run during such periods, no extensions of time shall be granted, and Contractor shall be liable for any delays to the Project incurred by Owner or by other Contractors to their Work. The Owner may also declare the Contractor in default for failure to maintain required insurance.

## **§11.2 BONDING**

**§11.2.1** Bid Bond: Contractor shall furnish a Bid Bond, in the amount of ten percent (10%) of the Contract Sum, as security for the Contractor's adherence to its proposal, the execution and faithful performance of the Contract, and the furnishing of Performance and Payment Bonds by the Contractor.

**§11.2.2** Bid Security shall be returned to unsuccessful Bidders after a Contract is awarded. If an award is not made within Forty-five (45) Days, pursuant to General Municipal Law §105, bidders may withdraw their Bid Security.

**§11.2.3** Performance and Payment Bonds: The Contractor shall furnish Performance and Payment Bonds in an amount equal to one hundred percent (100%) of the total Contract Sum as security for the faithful performance of this Contract, and for the payment of all persons performing labor or furnishing materials in connection with this Contract. The Performance and Payment Bonds shall be delivered to the Owner by the Contractor prior to or at the time of execution of the Contract. If a Contractor fails to deliver the required Performance and Payment security, its Bid security shall be enforced, and an award of Contract may be made to the next lowest responsible and responsive Bidder, or the Contract may be rebid.

**§11.2.4** Maintenance Bond: Upon application for Final Payment, the Contractor shall provide the Owner with a Maintenance Bond in the amount of ten percent (10%) of the total Contract Sum at Substantial Completion which shall remain in effect for one year from the date of issue of Final Payment check to Contractor to replace any and all defects arising in said Work whether resulting from defective materials or defective workmanship, after which period then the above obligation shall be void. Otherwise, it shall remain in full force and effect.

**§11.2.5** Acceptable Types of Security: Acceptable types of security for Bid, Performance and Payment Bonds shall be limited to a bond in a form satisfactory to the Owner or a bank certified check or money order.

**§11.2.6** All bonds are to be executed on the forms substantially similar to those provided in the Contract Documents and the surety company must be licensed in the State of New York, have a A.M. Best Rating of A- or better and appear on the most recent published Department of the Treasury's Listing of Approved Sureties (Department Circular 570) at the time of filing the bonds.

**§11.2.7** Power of Attorney: Attorneys-in-fact who sign Bid, Performance, or Payment Bonds must file with each bond a certified copy of their power of attorney to sign said bonds.

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

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§12.1 UNCOVERING OF WORK**

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

**§12.1.2** If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or another Contractor in which event the responsible party shall be responsible for payment of such costs.

### **§12.2 CORRECTION OF WORK**

**§12.2.1** The Contractor shall promptly correct Work rejected by the Construction Manager, Architect or Owner deemed as defective 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 and compensation for the Construction Manager's, Architect's or Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§12.2.2** In addition to the Contractor's obligations under §3.5, if, within one (1) year after the date of Substantial Completion of the Work, or designated portion thereof, or after the date for commencement of warranties established under §9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, whether performed by the Contractor, Subcontractors of any tier, agents or employees, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. The one-(1-) 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 performance of the Work. This obligation under this §12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract.

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

**§12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with §2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect issued through the Construction Manager, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay cost of such removal and storage within Ten (10) Days after written notice, the Owner may upon Ten

(10) additional Days' written notice sell such materials and equipment at auction or at private sale and shall account for proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Construction Manager's and Architect's services and expense made necessary thereby. If proceeds of the sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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

**§12.2.6** Nothing contained in this §12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one (1) -year period for correction of Work as described in §12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§12.3 ACCEPTANCE OF NONCONFORMING WORK**

**§12.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall occur regardless of whether Final Payment has been made.

## **ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§13.1 TERMINATION BY THE CONTRACTOR**

**§13.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of Ninety (90) Days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction over the Work or parties hereto which requires all Work to be stopped; or
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;

**§13.1.2** The Contractor may, upon seven (7) days' notice to the Owner, HHAC, Architect and Construction Manager, terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in §13.3 constitute in the aggregate more than one hundred (100) percent of the total number of Days scheduled for completion, or One Hundred Twenty (120) Days in any successive Three Hundred Sixty-five- (365-) Day period commencing from the start date in the Notice to Proceed, whichever is less.

**§13.1.3** In case of such termination, the Contractor shall be entitled to receive payment for Work executed.

**§13.2 TERMINATION BY THE OWNER FOR CAUSE**

**§13.2.1** The Contractor shall be deemed in default and the Owner may terminate the Agreement if the Contractor shall:

- .1 cease performance or fail to commence the Work within 10 days after the Notice to Proceed is given;
- .2 persistently or repeatedly refuse or fail to supply sufficient properly skilled workers or sufficient proper equipment or materials to insure the completion of the Work within the specified time as reasonably determined by Owner, which failure shall continue for Ten (10) Days after notice thereof from the Owner;
- .3 perform the Work in a manner reasonably deemed by Owner to be unsatisfactory, which failure shall continue for Ten (10) Days after notice thereof from the Owner;
- .4 fail or refuse to remove materials reasonably determined by Construction Manager, Architect or Owner to be unsuitable, which failure shall continue for Ten (10) Days after notice thereof from the Owner;
- .5 fail or refuse to perform anew any Work reasonably determined by Construction Manager, Architect or Owner to be defective or unacceptable, which failure shall continue for Ten (10) Days after notice thereof from the Owner;
- .6 fail to diligently proceed with the prosecution of the Work according to the agreed Master Schedule for completion, which failure shall continue for Ten (10) Days after notice thereof from the Owner;
- .7 fail to make prompt payment to Subcontractors, Sub-Subcontractors, or suppliers for labor or material furnished to or for the Project, which failure shall continue for Ten (10) Days after notice thereof from the Owner or otherwise become insolvent or be declared bankrupt, commit any act of bankruptcy or insolvency, or make an assignment for the benefit of creditors;
- .8 violate any Laws, which violation shall continue for Ten (10) Days after notice thereof from the Owner;
- .9 be guilty of substantial breach of a provision of the Contract Documents;
- .10 otherwise fail to perform its obligations hereunder, which failure shall continue for Thirty (30) Days after notice thereof from the Owner;
- .11 intentionally falsify or intentionally not complete the certification provided by Contractor in the Bidder Disclosure of Prior Non-Responsibility Determinations pursuant to New York State Finance Law §139-k(5) ;
- .12 be adjudicated a bankrupt or makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Contractor's insolvency.

**§13.2.2** When the Owner determines that any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies the Owner may have, and after giving the Contractor and the Contractor's surety, if any, Seven (7) Days written notice, and may subject to any prior rights of the surety:

- .1 terminate the Agreement;
- .2 take possession of the Site and of all materials, equipment, tools, construction equipment and

machinery thereon owned by the Contractor;

- .3 finish the Work by whatever method the Owner, in its sole discretion may deem expedient;
- .4 provide the Contractor with instructions as described in subparagraph 13.2.3.

**§13.2.3** Upon receipt of notice of termination, the Contractor shall immediately, in accordance with written instructions from the Owner, through the Construction Manager, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this §13.2:

- .1 cease operations as specified in the notice;
- .2 place no further orders and enter into no further subcontracts for materials, equipment, labor, services or facilities, except as necessary to complete continued portions of the Contract;
- .3 promptly make every reasonable effort to procure cancellation upon terms satisfactory to the Owner of all orders and subcontracts;
- .4 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work and to protect materials, plant and equipment on the Site or in transit thereto;
- .5 execute and deliver such papers and documents and take such steps, including legal assignment of its contractual rights, as the Owner may require in order to vest in the Owner the rights and benefits the Contractor may have under any obligations or commitments incurred or undertaken by the Contractor in connection with the Work.

**§13.2.4** In the event that the Owner terminates the Contract under §13.2, the Contractor shall not be entitled to receive further payment until the Work is finished. If the sum of the costs of finishing the Work, including compensation for the services of the Construction Manager, Architect, their respective consultants and other Contractors and their Subcontractors or Sub-Subcontractors made necessary thereby, plus the amounts previously paid to the Contractor prior to termination, exceed the Contract Sum, the Contractor shall pay the difference to the Owner upon demand. If the foregoing costs together with all other costs incurred by the Owner as a consequence of having to terminate the Contract are less than the Contract Sum, then upon completion of the Work the Contractor shall be paid the portion of such difference, if any, properly allocable to the portion of the Work completed by the Contractor prior to termination by the Owner and for which the Contractor has not theretofore been paid. In no event, however, shall the Contractor be entitled to receive more than the difference between the Contract Sum, minus all costs associated with completing the Work and terminating the employment of the Contractor. In determining the amount owing to the Contractor, allowances shall be made for claims which the Owner has against the Contractor under the Contract, and for the value of materials, supplies, equipment and other items that are part of the Cost of the Work to be disposed of by the Contractor.

**§13.2.5** Neither the Owner nor its agents or employees are in any way liable or accountable to the Contractor for the method by which completion of the Work, or any portion thereof, is accomplished or by the price paid therefore. By terminating the employment of the Contractor, the Owner does not forfeit the right to recover damages from the Contractor.

### **§13.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**§13.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

**§13.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

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

**§13.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

**§ 13.4.4** In the event that the HHAC determines that State funds are unavailable at any time during the duration of the HHAC Agreement, and the HHAC Agreement is terminated, the Owner shall give timely written notice to the Contractor of the termination and, if Owner is unable to obtain another funding source, terminate this Contract. In the event of such termination the Owner shall be obligated to pay the Contractor only for Work completely executed by the Contractor prior to the time the written notice of the termination was received by the Contractor and costs incurred by reason of such termination.

**END OF SECTION 007000**

**SECTION 00 8100**

**PREVAILING WAGE SCHEDULE**

**PART 1 GENERAL**

**1.1 GENERAL**

Wage rates shall apply as shown in the Prevailing Wage Schedule with PRC#2021006645 prepared by the New York State Department of Labor, a copy of which is available at:

<https://applications.labor.ny.gov/wpp/showFindProject.do?method=showIt>

and updates may be found at:

<https://applications.labor.ny.gov/wpp/publicViewPWChanges.do?method=showIt#>

**PART 2 PRODUCTS (Not Applicable)**

**PART 3 EXECUTION (Not Applicable)**

**END OF SECTION 008100**

**SECTION 008300**

**MWBE FORMS**

Fillable PDF versions of the following forms required with the Bid and during the Contract are found here:  
<https://otda.ny.gov/contracts/mwbe/forms.asp>

**To be submitted with each Bid:**

MWBE Subcontractor Utilization Plan (OTDA-4937)

MWBE Subcontractor Request for Waiver Form (OTDA-4969) – one time submission, only if a waiver is requested

HHAP M/WBE Subcontractor and Supplier Letter of Intent to Participate (OTDA-4938A)

Note: The HHAP Portion in support of the MWBE Goal is 100% for all items.

**To be submitted quarterly after award of a Contract:**

MWBE Subcontractor Quarterly Compliance Report (OTDA-4968)

MWBE Subcontractor Request for Waiver Form (OTDA-4969) – one time submission, only if a waiver is requested

**Forms are to be submitted to:**

Brian Titsworth

Deputy Commissioner of Infrastructure Services

Orange County Dept of Public Works

2455-2459 Route 17M

P.O. Box 509

Goshen, NY 10924

[btitsworth@orangecountygov.com](mailto:btitsworth@orangecountygov.com)

phone (845) 291-2750

All references above are subject to revision by OTDA, current versions of the forms posted at the URL first listed above should be used throughout bidding and the term of the Contract.