

WESTCHESTER COUNTY HEALTH CARE CORPORATION

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## INVITATION FOR BIDS

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CONTRACT NO. CMC-14574

SINGLE PRIME CONTRACT

BID SPECIFICATIONS FOR:  
MACY PAVILION HEAT EXCHANGER HHX-1

AT

WESTCHESTER MEDICAL CENTER  
VALHALLA, NEW YORK

DUE DATE: FRIDAY AUGUST 23, 2019, 2:00 PM

Westchester Medical Center  
Contract CMC-14574  
MACY PAVILION HEAT EXCHANGER HHX-1

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NOTICE TO BIDDERS

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Westchester County Health Care Corporation

INVITATION FOR BIDS

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CONTRACT NO. CMC-14574

FOR

MACY PAVILION HEAT EXCHANGER HHX-1

AT

WESTCHESTER MEDICAL CENTER, VALHALLA NEW YORK

SEALED BIDS FOR THE ABOVE-REFERENCED CONTRACT PROJECT AT WESTCHESTER MEDICAL CENTER, VALHALLA CAMPUS, VALHALLA, NEW YORK will be received and accepted by the Westchester County Health Care Corporation (the "Owner"), Facilities Management Department, at Room E004, Macy Pavilion, Basement Floor, Valhalla, New York 10595 until 2:00 PM Friday, August 23, 2019 and immediately thereafter, the Bids will be publicly opened and read aloud in the Facilities Management Department Conference Room. For additional bidding questions or information, call Designated Contact(s) Mike Praskievicz (914) 497-7451 or Marvin Blanco (914) 493-8610. NOTE - *designated contacts are the only ones that can talk to Bidders.*

Prospective Contractors, Subcontractors and other interested parties may obtain complete sets of the authorized Bid Documents from the website at <https://www.westchestermedicalcenter.com/procurement-opportunities>. This is the only way you are assured of receiving the official bid documents and addendums.

A Bidders' optional conference and walkthrough inspection of the Corporation's campus will be held on Tuesday, August 13, 2019 at 10:00 AM in the Conference Room in the Facilities Management Department E-004 in the Basement level of Macy Pavilion, Valhalla Campus, Valhalla, New York 10595. The Owner reserves the right to waive any informality in the Bid, or to reject any and all Bids.

Westchester Medical Center  
Contract CMC-14574  
MACY PAVILION HEAT EXCHANGER HHX-1

It is the Owner's policy to encourage and support significant, meaningful participation by business enterprises owned and controlled by people of color and/or women (MBE/WBE) in contracts and projects funded by the Owner.

The successful Contractor will be required to submit a Performance and Payment bond in an amount equal to one hundred (100%) percent of the contract price and both in a form acceptable to the Owner. A Bid Bond and Consent of surety in the form specified in the bid specifications must be executed Bidder's surety and submitted with the bid.

**SINGLE-CONTRACT PROJECT  
SPECIAL NOTICE  
CMC- 14574**

PURSUANT TO THE NEW YORK STATE GENERAL MUNICIPAL LAW §101 (WICKS LAW), CONTRACTS FOR THE ERECTION, CONSTRUCTION, RECONSTRUCTION, OR ALTERATION OF BUILDINGS WHERE ENTIRE COSTS OF SUCH PUBLIC WORK IS *ONE MILLION FIVE HUNDRED THOUSAND DOLLARS OR LESS* ("SINGLE-CONTRACT PROJECTS") WILL **NOT** REQUIRE THE PREPARATION OF SEPARATE CONTRACTS FOR PLUMBING AND GAS FITTING; STEAM HEATING, HOT WATER HEATING, VENTILATION AND AIR CONDITIONING APPARATUS; AND ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES.

EACH BIDDER ON A PUBLIC WORK FOR *A SINGLE-CONTRACT PROJECT*, HOWEVER, SHALL SUBMIT WITH ITS BID A SEPARATE SEALED CONTRACTOR'S LIST OF SUBCONTRACTORS THE BIDDER WILL USE TO PERFORM WORK UNDER THE CONTRACT, AND THE AGREED UPON AMOUNT TO BE PAID TO EACH SUBCONTRACTOR, FOR:

- (A) PLUMBING AND GAS FITTING;
- (B) STEAM HEATING, HOT WATER HEATING, VENTILATION AND AIR CONDITIONING APPARATUS; AND
- (C) ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES.

AFTER THE LOW BID IS ANNOUNCED, THE SEALED CONTRACTOR'S LIST OF SUBCONTRACTORS SUBMITTED WITH SUCH LOW BID SHALL BE OPENED AND THE NAMES OF SUCH SUBCONTRACTORS SHALL BE ANNOUNCED.

CHANGES TO ANY OF THE SUBCONTRACTORS OR AGREED-UPON AMOUNT TO BE PAID TO EACH SHALL REQUIRE THE APPROVAL OF WESTCHESTER COUNTY HEALTH CARE CORPORATION IN ACCORDANCE WITH APPLICABLE LAW.

THE SEALED LISTS OF SUBCONTRACTORS SUBMITTED BY ALL OTHER BIDDERS SHALL BE RETURNED TO THEM UNOPENED AFTER THE CONTRACT AWARD.

## TABLE OF CONTENTS

### INTRODUCTORY INFORMATION

#### NOTICE TO BIDDERS

Section 0001 - Table of Contents TOC-1

### LIST OF DRAWINGS

The following list of Design Drawings, herewith made a part of these Specifications, shows in general and/or in detail the work to be done under this Contract and/or the various Contracts forming the entire work for the Project, as described herein. Drawings are attached under separate cover.

<u>DRAWING NO.</u>	<u>DRAWING TITLE</u>
M-000.00	MECHANICAL LEGEND SCHEDULE AND NOTES
M-020.00	MECHANICAL SPECIFICATIONS
M-021.00	MECHANICAL SPECIFICATIONS
M-200.00	MECHANICAL DEMOLITION AND CONSTRUCTION
M-700.00	MECHANICAL DETAILS 1
M-701.00	MECHANICAL CONTROL DETAILS

### BIDDING REQUIREMENTS CONTRACT FORMS & CONDITIONS OF THE CONTRACT

Section 0100 - Information for Bidders	IFB-1 thru 8
Section 0200 - General Conditions	GC-1 thru 94
Section 0300 - Supplementary Conditions	SC-1
Section 0400 - Bid Forms	BPF-1 thru18

### TECHNICAL SPECIFICATIONS

Under separate cover

END OF TABLE OF CONTENTS

Westchester Medical Center  
Contract CMC14574

Pharmacy USP 797-800 Compliance – Carousel Install Phase I

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**INFORMATION FOR BIDDERS**

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**PART 1 - PROJECT DESCRIPTION**

- 1.1 The Work will be performed under the Contract for the installation of a HX-1 Heat Exchanger and shall be governed by the Project Specifications and Drawings as noted. The description of the Project is as follows:

PROJECT:

MACY PAVILION HEAT EXCHANGER HX-1  
CONTRACT NO. CMC-14574  
WESTCHESTER MEDICAL CENTER  
VALHALLA, NEW YORK 10595

OWNER:

WESTCHESTER COUNTY HEALTH CARE CORPORATION  
100 Woods Road,  
Valhalla, New York 10595  
Phone: (914) 493-6923

ARCHITECT:

N/A

ENGINEER:

M-E Engineers  
29 West 38<sup>th</sup> Street  
5<sup>th</sup> Floor  
New York, NY 10018  
Phone (212) 447- 6770

CONSTRUCTION MANAGER:

TBD

- 1.2 The Bid Documents consist of the Drawings, the Project Specifications, and the Addenda (if any issued during the bidding period). Prospective Bidders should read this entire document. The Bidders must complete all sections of this Bid Specification and sign where indicated.

Westchester Medical Center  
Contract CMC-14574  
MACY PAVILION HEAT EXCHANGER HX-1

Submission of this Bid represents acceptance of all terms, conditions and prices contained herein.

1.3 Pursuant to State Finance Law §§ 139-j and 139-k, this Bid Specifications includes and imposes certain condition on the communications between the OWNER and Bidders during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to let a Contract through final award and approval of the contract by the OWNER (“restricted period”) to other than designated staff unless it is a contact that is include among certain statutory exception set forth in State Finance Law §139j(3)(a). Designated staff, as of the date of this Bid Specification, are identified on the in the Instruction to this Bid Specifications. The exception to this restriction is for certain “Permissible Contacts” defined in New York State Finance Law §139j(3)(a). Permissible Contacts include:

- (i) submission of written proposals;
- (ii) submission of written questions to the designated contact when all written questions and responses are to be disseminated to all interested Bidders;
- (iii) written complaints by a Bidder to the Corporation General Counsel regarding the failure of Corporation staff to comply timely with the provisions of the Law;
- (iv) participation in a bid conference or interviews;
- (v) negotiations subsequent to tentative award;
- (vi) review and debriefings of procurement awards; and
- (vii) communications during bid complaints, protests or appeals.

1.4 Employees of the OWNER are required to record certain information when contacted during the restricted period. A review of whether such contacts were Permissible Contacts will be considered in connection with any determination of responsibility of the Bidder. Failure of any Bidder to timely certify or to disclose accurate and complete information or the submission of any intentionally false or intentionally incomplete certification may result in the rejection of the contract award or is such contract has been executed the executed, the immediate termination of the contract. Further, multiple violations within a four (4) year period, may result in debarment of the Bidder from proposing on or obtaining governmental procurement contracts in the State of New York.

1.5 The Bidder who is awarded the contract (“CONTRACTOR”) is required to return the executed contracts, bonds and insurance within two weeks from receipt of the Notice of Award unless otherwise noted in the Bidding Documents. **The work under this Contract must be commenced**

within 30 days of the service of a Notice to Proceed on the CONTRACTOR. Work shall be completed 180 calendar construction days from the time the contract is awarded.

**PART 2 - INSTRUCTIONS FOR RESPONDING TO THIS PROPOSAL SPECIFICATION:**

- 2.1 COMPLETED BID PROPOSALS MUST BE SUBMITTED IN A SEALED ENVELOPE SHOULD AND BE HAND DELIVERED OR SENT TO THE ADDRESS IDENTIFIED BELOW AND MUST CLEARLY INDICATE THE CONTRACT NUMBER AND DUE DATE SET FORTH IN THIS BID PROPOSAL SPECIFICATION ON THE OUTSIDE OF THE ENVELOPE. No oral or telegraphic Bid Proposals or modifications will be considered.
- 2.2 ***FOR SINGLE CONTRACT PROJECTS EXEMPT FROM WICKS LAW, EACH BIDDER SHALL SUBMIT WITH ITS BID A SEPARATE SEALED LIST IDENTIFYING EACH SUBCONTRACTOR THAT THE BIDDER WILL USE TO PERFORM WORK ON THIS CONTRACT, AND THE AGREED UPON AMOUNT TO BE PAID TO EACH FOR:***
- (i) ***PLUMBING AND GAS FITTING***  
(ii) ***STEAM HEATING, HOT WATER HEATING, VENTILATION AND AIR CONDITIONING APPARATUS; AND***  
(iii) ***ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES.***
- 2.3 All completed Bid must be received and accepted by the Westchester County Health Care Corporation, Facilities Department, at Basement - Room E-004, Macy Pavilion, Valhalla, New York 10595 prior to 2:00 p.m. on the prescribed Bid date. The Owner is not responsible for any internal or external delivery delays that may cause the subject Bid to arrive beyond 2:00 p.m. on the prescribed date, in the prescribed location. No late or verbal Bid Proposals shall be accepted.
- 2.4 Each Bid shall include the Base Bid and all Alternate Bids if any, which are requested for the Contract. All Bidders must quote prices for the Work being requested in the places and formats indicated. Failure to properly fill out all sections of the Bid forms may result in the rejection of the Proposal.
- 2.5 Bidders for all contracts are cautioned to inspect the Bid Documents for the work of contracts other than those for which they are submitting bids, to inform themselves of the nature and extent of work necessary to produce a complete project.
- 2.6 Each Bidder shall ascertain prior to submitting its Bid that it has received all Addenda issued, and shall acknowledge their receipt in its Bid.

- 2.7 Bids that do not contain a signed original of the Bidders Declarations and Non Collusive Bidding Certificate will be rejected. Refer to the Bid Forms Page 0400-4.
- 2.8 Bids that do not contain a separate sealed Contractor's List of Subcontractors identifying the names of each subcontractor as required in the Bid Form will be rejected. Refer to the Bid forms Page 00400-5.
- 2.9 Bids that do not contain a signed original AFFIRMATION and CERTIFICATION as required by New York State Finance Law §§ 139-j and 139-k will be rejected. The Affirmation & Certification must be completed and signed by a corporate officer or Principal of the Contractor. Refer to the Bid forms Page 0400-6.

### **PART 3 - PROPOSAL REQUIREMENTS**

- 3.1 The Owner reserves the right to waive any informality in the Bid, or to reject any and all Bids. Bidder may request to withdraw their Bid within 5 days after the due date of the Bid provided bidder provides documentation of an arithmetic error in bid tabulation.
- 3.2 Each Bid shall be submitted with a completed **Contracting Questionnaire**. Failure to submit the Contracting Questionnaire may result in rejection of a Contractor's bid.
- 3.3 Each Bid must be accompanied by a **Bid Bond and Consent of Surety** (Bid forms page 0400-7-8).
- 3.4 Labor Requirements:
- A. Each laborer, worker or mechanic or other persons doing or contracting to do the whole or any part of the Work described in the Contract Documents shall be paid the prevailing wages and provided the supplements (including but not limited to health, welfare and pension benefits) as required by Article 8 (Section 220-223) and Article 9 (230-239) of the New York State Labor Law. The "Schedule of Hourly Rates and Supplements" set forth in the Supplementary Conditions shows the minimum hourly rates of wages which can be paid and the minimum supplements that can be provided as of the date of the schedule.
  - B. All employees of CONTRACTOR or of its Subcontractors, who perform any work or enter onto the Site for any purpose, shall be required to obtain and wear temporary I.D. badges, which shall be issued by OWNER.



- C. The CONTRACTOR's attention is directed to Article 6 of the General Conditions.
- 3.5 "Or Equal" Wherever in these Specifications an item or method is described or identified by trade name or name of manufacturer, it shall be interpreted as indicating the standard of quality or performance required, but not restricting competition among items of equal or better quality.
- 3.6 OWNER'S Contingency:
- A. Each Contractor shall include in his total Bid the lump sum printed in the Bid I Forms and any bid other than the specified amount will be considered informal.
- B. Under this item each Bidder shall furnish all labor, material and equipment required to accomplish additional work:
1. Necessitated by encountering during the course of the work field conditions of a nature not determinable during design; or
  2. For which no unit prices are applicable.
- C. Only that additional work shall be performed by the CONTRACTOR and will be paid for by the OWNER, which has been authorized by the OWNER in writing, prior to its commencement.
- 3.7 Contractor is not required to obtain or pay for building permits in relation to the performance of the Work required by this Contract.
- 3.8 The OWNER is exempt from New York State Sales Tax. Consequently, Contractors will be exempt from payment on purchases of materials and supplies for the execution of the Contract Work and such taxes shall not be included in the Bids. This exemption does not, however, apply to tools, machinery, equipment, or other property leased by or to a contractor or a subcontractor and the CONTRACTOR and its subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property. The bidder's attention is directed to Section 6.10 of the General Conditions. If purchases by CONTRACTORS for the construction of this Project are

subsequently determined by an appropriate court of law to be subject to New York State Sales Tax, the OWNER will reimburse the CONTRACTORS for the payment of such taxes.

- 3.9 The Work shall be constructed in strict accordance with the contract plans and specifications under the control of the General Contractor. All contract documents shall be reviewed by all sub-contractors.
- 3.10 Final conditions presented to the CONTRACTOR may vary slightly; minor variations are to be expected and are to be included in the work. Owner's operation will remain during course of work. Construction operations to be scheduled and confined to minimize inconveniences and disruption to these operations. Pedestrian and vehicular access to facilities to remain at all times.

**PART 4 - INTERPRETATION OF BID PROPOSAL DOCUMENTS:**

- 4.1 Should a Bidder find any discrepancies in, or omissions from, any of the documents, or be in doubt as to their meaning, he shall at once notify the Owner's Rep and ARCHITECT, who, by Addendum, will send instructions to all bidders known to him. Neither the Owner, the Owner's Rep. nor the ARCHITECT will be responsible or in any manner liable for oral instructions.
- 4.2 Requests for instructions shall be submitted in ample time for a written reply to be received prior to submission of Bid. Requests for approval of substitute materials will not be treated as questions of interpretation and no consideration will be given to them prior to receipt of Bid.
- 4.3 No interpretation of the meaning of the plans, specifications or other Contract Documents will be made to any prospective contractor orally. Every request for such interpretation should be in writing submitted to the Owner's Rep. addressed to Architect and to be given consideration must be received at least five (5) days prior to the date fixed for the submission of the bid proposal. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda to the specifications which, if issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective addresses furnished for such purposes) not later than three (3) days prior to the date fixed for the submitting the Bid Specification. Failure of any bidder to receive any such addendum or interpretation or any other form, instrument or document shall not relieve any bidder from any obligation under this Bid as submitted. All Addenda so issued shall become part of the Contract Documents.

## **PART 5 - QUALIFICATIONS OF CONTRACTORS**

- 5.1 After the opening of Bid and when directed by the OWNER, bidders shall submit additional information as the OWNER may require concerning its financial conditions, present and proposed plant and equipment, the personnel and qualifications of its working organization, prior experience and performance record, and any other data indicating its ability to perform the Contract satisfactorily.
- 5.2. In addition to all evidence of qualifications submitted, and when directed by the OWNER, each bidder, or a responsible agent, shall submit to an oral examination to be conducted by the OWNER or its authorized representative in relation to his proposed subcontractors, materials and equipment to be incorporated in the work, and such other matters (including a detailed breakdown of any proposal) as the OWNER may deem necessary in order to determine the bidder's ability and responsibility to perform the work in accordance with the Contract Documents.
- 5.3 The OWNER reserves the right to reject any bid if the evidence submitted by, or investigation of, bidder fails to satisfy the OWNER that such bidder is responsible and properly qualified to carry out the obligation of the Contract and to complete the Work contemplated therein.
- 5.4 The OWNER reserves the right to reject any bid if the evidence submitted by, or investigation of, in accordance with New York State Labor Law Section 222 bidder fails to satisfy the OWNER that such bidder is able to perform and properly qualified to carry out the obligation of the Contract and to complete the Work contemplated therein.

## **PART 6 - AWARD OF CONTRACT**

- 6.1 The OWNER reserves the right to require strict performance of each and every term and condition described in the bidding documents or, in its sole discretion, to waive any informality in or to reject any or all bids.
- 6.2 The Contract will be awarded, if at all, to the Contractor with lowest possible price as determined by the OWNER, according to applicable law and the provisions of the Contract Documents.
  - A. In determining whether the Bidder is responsible, financial responsibility shall not be the sole consideration. The OWNER is concerned with (a) the proven and probable ability of the contractor and subcontractor to satisfactorily perform the Contract so that the

project will be properly constructed in accordance with the Contract Documents and ready for occupancy within the Contract Times and, (b) the proven and probable ability of the contractor to work cooperatively and satisfactorily with other contractors for other branches of work so that they may perform their work satisfactorily and within the time limits of their respective Contracts.

B. The Owner shall also consider:

1. The financial and organizational capacity of the contractor and subcontractors in relation to the magnitude of the work such contractors are to perform;
2. The record of performance of the contractor or subcontractors on previous work;
3. The record of performance of the contractor or subcontractors in complying with existing labor standards and maintaining harmonious labor relations;
4. The commitment of the Contractor to work with Minority and women's owned business enterprises pursuant to Article 15-A of the Executive Law of New York through joint ventures through subcontractor relationships.

6.3 The form of contract is available for inspection at the OWNER'S Office of Legal Affairs, 100 Woods Road, Executive Offices, C-2, Valhalla, New York, 10595.

WESTCHESTER COUNTY HEALTH CARE CORPORATION  
GENERAL CONDITIONS

## TABLE OF CONTENTS

### GENERAL CONDITIONS

<b>ARTICLE 1 - DEFINITIONS AND TERMINOLOGY .....</b>	<b>1</b>
1.01    DEFINED TERMS .....	1
1.02    TERMINOLOGY .....	7
<b>ARTICLE 2 - PRELIMINARY MATTERS.....</b>	<b>9</b>
2.01    DELIVERY OF EXECUTED AGREEMENTS AND BONDS .....	9
2.02    COPIES OF DOCUMENTS.....	9
2.03    COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED .....	9
2.04    STARTING THE WORK.....	9
2.05    BEFORE STARTING CONSTRUCTION .....	9
2.06    PRECONSTRUCTION CONFERENCE.....	10
2.07    INITIAL ACCEPTANCE OF SCHEDULES .....	11
<b>ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE.....</b>	<b>12</b>
3.01    INTENT .....	12
3.02    REFERENCE STANDARDS .....	12
3.03    REPORTING AND RESOLVING DISCREPANCIES .....	13
3.04    AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS.....	13
3.05    REUSE OF DOCUMENTS.....	14
<b>ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS .....</b>	<b>15</b>
4.01    AVAILABILITY OF LANDS.....	15
4.02    SUBSURFACE AND PHYSICAL CONDITIONS.....	15
4.03    DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS.....	16
4.04    UNDERGROUND FACILITIES.....	18
4.05    REFERENCE POINTS .....	19
4.06    HAZARDOUS ENVIRONMENTAL CONDITION AT SITE.....	20
<b>ARTICLE 5 - BONDS AND INSURANCE .....</b>	<b>22</b>
5.01    PERFORMANCE, PAYMENT, AND OTHER BONDS.....	22
5.02    LICENSED SURETIES AND INSURERS .....	23
5.03    CERTIFICATES OF INSURANCE.....	23
5.04    CONTRACTOR'S LIABILITY INSURANCE .....	24
5.05    OWNER'S LIABILITY INSURANCE.....	27
5.06    PROPERTY INSURANCE .....	27

5.07	WAIVER OF RIGHTS.....	28
5.08	RECEIPT AND APPLICATION OF INSURANCE PROCEEDS .....	29
5.09	ACCEPTANCE OF BONDS AND INSURANCE; OPTION TO REPLACE.....	29
5.10	PARTIAL UTILIZATION, ACKNOWLEDGMENT OF PROPERTY INSURER .....	30
<b>ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES .....</b>		<b>31</b>
6.01	SUPERVISION AND SUPERINTENDENCE.....	31
6.02	LABOR; WORKING HOURS .....	31
6.03	SERVICES, MATERIALS, AND EQUIPMENT.....	33
6.04	PROGRESS SCHEDULE.....	34
6.05	SUBSTITUTES AND "OR-EQUALS" .....	34
6.06	CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS.....	37
6.07	PATENT FEES AND ROYALTIES.....	38
6.08	PERMITS; LICENSE REQUIREMENTS .....	39
6.09	LAWS AND REGULATIONS .....	40
6.10	TAXES.....	41
6.11	USE OF SITE AND OTHER AREAS .....	42
6.12	RECORD DOCUMENT.....	43
6.13	SAFETY AND PROTECTION.....	43
6.14	SAFETY REPRESENTATIVE.....	45
6.15	HAZARD COMMUNICATION PROGRAMS .....	45
6.16	EMERGENCIES.....	45
6.17	SHOP DRAWINGS AND SAMPLES .....	46
6.18	CONTINUING THE WORK.....	48
6.19	CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE.....	48
6.20	INDEMNIFICATION.....	50
<b>ARTICLE 7 - OTHER WORK .....</b>		<b>52</b>
7.01	RELATED WORK AT SITE .....	52
7.02	COORDINATION.....	53
<b>ARTICLE 8 - OWNER'S RESPONSIBILITIES .....</b>		<b>54</b>
8.01	COMMUNICATIONS TO CONTRACTOR.....	54
8.02	REPLACEMENT OF ARCHITECT .....	54
8.03	FURNISH DATA .....	54
8.04	PAY PROMPTLY WHEN DUE.....	54
8.05	LANDS AND EASEMENTS; REPORTS AND TESTS .....	54
8.06	INSURANCE .....	54
8.07	CHANGE ORDERS.....	55

8.08	INSPECTIONS, TESTS, AND APPROVALS.....	55
8.09	LIMITATIONS ON OWNER’S RESPONSIBILITIES.....	55
8.10	UNDISCLOSED HAZARDOUS ENVIRONMENTAL CONDITION.....	55
<b>ARTICLE 9 - ARCHITECT’S STATUS DURING CONSTRUCTION .....</b>		<b>56</b>
9.01	OWNER’S REPRESENTATIVE .....	56
9.02	VISITS TO SITE .....	56
9.03	PROJECT REPRESENTATIVE.....	56
9.04	CLARIFICATIONS AND INTERPRETATIONS.....	57
9.05	AUTHORIZED VARIATIONS IN WORK.....	57
9.06	REJECTING DEFECTIVE WORK.....	57
9.07	SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS.....	58
9.08	DETERMINATIONS FOR UNIT PRICE WORK.....	58
9.09	DECISIONS ON REQUIREMENTS OF CONTRACT DOCUMENTS AND ACCEPTABILITY OF WORK.....	58
9.10	LIMITATIONS ON ARCHITECT’S AUTHORITY AND RESPONSIBILITIES.....	59
<b>ARTICLE 10 - CHANGES IN THE WORK; CLAIMS .....</b>		<b>60</b>
10.01	AUTHORIZED CHANGES IN THE WORK.....	60
10.02	UNAUTHORIZED CHANGES IN THE WORK.....	60
10.03	EXECUTION OF CHANGE ORDERS .....	60
10.04	NOTIFICATION TO SURETY .....	61
10.05	CLAIMS AND DISPUTES.....	61
<b>ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK.....</b>		<b>63</b>
11.01	COST OF THE WORK.....	63
11.02	CASH ALLOWANCES.....	66
11.03	UNIT PRICE WORK.....	67
<b>ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES .....</b>		<b>69</b>
12.01	CHANGE OF CONTRACT PRICE.....	69
12.02	CHANGE OF CONTRACT TIMES.....	70
12.03	DELAYS BEYOND CONTRACTOR’S CONTROL .....	70
12.04	DELAYS WITHIN CONTRACTOR’S CONTROL.....	71
12.05	DELAYS BEYOND OWNER’S AND CONTRACTOR’S CONTROL.....	71
12.06	DELAY DAMAGES.....	71
<b>ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.....</b>		<b>73</b>
13.01	NOTICE OF DEFECTS.....	73
13.02	ACCESS TO WORK.....	73



13.03	TESTS AND INSPECTIONS.....	73
13.04	UNCOVERING WORK.....	74
13.05	OWNER MAY STOP THE WORK.....	75
13.06	CORRECTION OR REMOVAL OF DEFECTIVE WORK.....	75
13.07	CORRECTION PERIOD.....	75
13.08	ACCEPTANCE OF DEFECTIVE WORK.....	76
13.09	OWNER MAY CORRECT DEFECTIVE WORK.....	77
<b>ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION.....</b>		<b>79</b>
14.01	SCHEDULE OF VALUES.....	79
14.02	PROGRESS PAYMENTS.....	79
14.03	CONTRACTOR'S WARRANTY OF TITLE.....	83
14.04	SUBSTANTIAL COMPLETION.....	83
14.05	PARTIAL UTILIZATION.....	84
14.06	FINAL INSPECTION.....	85
14.07	FINAL PAYMENT.....	85
14.08	FINAL COMPLETION DELAYED.....	86
14.09	WAIVER OF CLAIMS.....	87
<b>ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION.....</b>		<b>88</b>
15.01	OWNER MAY SUSPEND WORK.....	88
15.02	OWNER MAY TERMINATE FOR CAUSE.....	88
15.03	OWNER MAY TERMINATE FOR CONVENIENCE.....	89
15.04	CONTRACTOR MAY STOP WORK OR TERMINATE.....	90
<b>ARTICLE 16 - DISPUTE RESOLUTION.....</b>		<b>92</b>
16.01	METHODS AND PROCEDURES.....	92
<b>ARTICLE 17 - COMPLIANCE WITH OWNER'S POLICIES.....</b>		<b>93</b>
17.01	SEXUAL HARASSMENT POLICY.....	93
17.02	MINORITY PARTICIPATION POLICY.....	93
17.03	AFFIRMATIVE ACTION PROVISION.....	94
17.04	NEW YORK STATE LABOR LAW REQUIREMENTS.....	95
<b>ARTICLE 18 - MISCELLANEOUS.....</b>		<b>96</b>
18.01	GIVING NOTICE.....	96
18.02	COMPUTATION OF TIMES.....	96
18.03	CUMULATIVE REMEDIES.....	96
18.04	SURVIVAL OF OBLIGATIONS.....	96
18.05	CONTROLLING LAW.....	96

## GENERAL CONDITIONS

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### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

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#### 1.01 DEFINED TERMS

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *A.A.S.H.O.* - American Association of State Highway Officials.
2. *Addenda*--Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the Contract Documents.
3. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.
4. *Application for Payment*--The form acceptable to ARCHITECT which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *ARCHITECT/ENGINEER*--The individual or entity licensed to practice architecture or engineering in the State of New York and engaged by OWNER to perform services in connection with the Work described in the Contract Documents. When any part of the Contract Documents refers to the term Engineer, such reference shall also be deemed to include the ARCHITECT.
6. ARCHITECT's Consultant--An individual or entity having a contract with ARCHITECT to furnish services as ARCHITECT's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.
7. *A.R.E.A.* -- American Railway A/E Association.
8. *Asbestos*--Any material that contains more than one percent asbestos and is friable or

is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

9. *A.S.T.M.* - American Society for Testing Materials.
10. *A.W.W.A.* - American Water Works Association.
11. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
12. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
13. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.
14. Bonds--Performance and payment bonds and other instruments of security.
15. *Change Order*--A document recommended by the Owner's Representative which is signed by ARCHITECT, CONTRACTOR, and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
16. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
17. CONSTRUCTION MANAGER--An individual or entity having a contract with OWNER to act on their behalf to help administrate the construction contracts and monitor the construction progress.
18. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
19. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post

Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ARCHITECT's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

20. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).
21. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Owner's Representative's written recommendation of final payment.
22. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.
23. *Cost of the Work*--See paragraph 11.01.A for definition.
24. *Drawings*--That part of the Contract Documents prepared or approved by ARCHITECT which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.
25. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
26. *Field Order*--A written order issued by ARCHITECT which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
27. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

28. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
29. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
30. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
31. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
32. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
33. *N.E.C.* - National Electrical Code
34. *N.E.M.A.* - National Electric Manufacturer's Association.
35. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.
36. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.
37. *OWNER*--The Westchester County Health Care Corporation, a public benefit corporation existing by virtue of Article 10-C, Title 1 of the New York Public Authorities Law.
38. *Owner's Representative*--An individual or entity having a contract with OWNER to represent the interests of, act on behalf of, and otherwise assist OWNER in the supervision,

administration, and general oversight of performance of the Contract and the progress of the Work.

39. Partial Utilization--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
40. PCBs--Polychlorinated biphenyls.
41. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
42. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
43. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
44. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
45. *Resident Project Representative*--The authorized representative of ARCHITECT who may be assigned to the Site or any part thereof.
46. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
47. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.
48. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER

upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

49. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
50. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.
51. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ARCHITECT, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
52. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.
53. *Supplier*--A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.
54. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
55. *Unit Price Work*--Work to be paid for on the basis of unit prices.
56. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

57. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ARCHITECT ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
58. *Written Amendment*--A written instrument modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

## 1.02 TERMINOLOGY

### A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ARCHITECT as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ARCHITECT any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

### B. *Day*

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.



C. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ARCHITECT’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, “provide” is implied.

- E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meanings are used in the Contract Documents in accordance with such recognized meaning.

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## ARTICLE 2 - PRELIMINARY MATTERS

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### 2.01 DELIVERY OF EXECUTED AGREEMENTS AND BONDS

- A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

### 2.02 COPIES OF DOCUMENTS

- A. CONTRACTOR shall properly execute and return two duplicate original counterparts of the Agreements to OWNER within fifteen days of receiving the Agreements. Upon receipt of all acquired bonds and insurance in a form acceptable to OWNER together with delivery of any other submittal required by the Contract Documents, the OWNER shall execute the Agreements and forward one fully executed original counterpart to the CONTRACTOR.
- B. OWNER shall furnish to CONTRACTOR up to six copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED

- A. Unless specifically stated otherwise in the Supplementary Conditions, the Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

### 2.04 STARTING THE WORK

- A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

### 2.05 BEFORE STARTING CONSTRUCTION

- A. *CONTRACTOR's Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ARCHITECT any conflict, error, ambiguity, or discrepancy which the CONTRACTOR may discover and shall obtain a written interpretation or clarification from ARCHITECT before proceeding with any Work affected thereby; however, the CONTRACTOR shall not be liable to OWNER or ARCHITECT for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.
- B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the Supplementary Conditions), CONTRACTOR shall submit to Owner's Representative for its timely review:
1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and
  3. A preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. "Supervision" must be a separate item in the schedule of values. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- C. *Evidence of Insurance:* Simultaneous with the return of the Agreement and before any Work at the Site is started, CONTRACTOR shall deliver to the OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

## 2.06 PRECONSTRUCTION CONFERENCE

- A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started,

a conference attended by Owner's Representative, CONTRACTOR, ARCHITECT, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

## 2.07 INITIAL ACCEPTANCE OF SCHEDULES

- A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by Owner's Representative, CONTRACTOR, ARCHITECT, and others as appropriate will be held to review for acceptability to ARCHITECT as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to the Owner's Representative and ARCHITECT.
1. The progress schedule will be acceptable to the Owner's Representative and ARCHITECT if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ARCHITECT responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore.
  2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to the Owner's Representative and ARCHITECT if it provides a workable arrangement for reviewing and processing the required submittals.
  3. CONTRACTOR's schedule of values will be acceptable to the Owner's Representative and ARCHITECT as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

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**ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

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3.01 INTENT

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
  
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.
  
- C. Clarifications and interpretations of the Contract Documents shall be issued by ARCHITECT as provided in Article 9.

3.02 REFERENCE STANDARDS

- A. *Standards, Specifications, Codes, Laws, and Regulations*
  - 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  
  - 2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ARCHITECT, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ARCHITECT, or any of ARCHITECT's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 REPORTING AND RESOLVING DISCREPANCIES

- A. *Reporting Discrepancies:* If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ARCHITECT in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ARCHITECT for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.
- B. *Resolving Discrepancies:* Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
1. The provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  2. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ARCHITECT's approval of a Shop Drawing or Sample; or (iii) ARCHITECT's written interpretation or clarification.

### 3.05 REUSE OF DOCUMENTS

- A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ARCHITECT or ARCHITECT's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ARCHITECT and specific written verification or adaptation by ARCHITECT. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

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**ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;  
REFERENCE POINTS**

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4.01 AVAILABILITY OF LANDS

- A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

4.02 SUBSURFACE AND PHYSICAL CONDITIONS

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ARCHITECT has used in preparing the Contract Documents; and
  2. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ARCHITECT has used in preparing the Contract Documents.
- B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ARCHITECT, or any of ARCHITECT's Consultants with respect to:
1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and



procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
- D. CONTRACTOR shall recognize and take notice of work to be performed by other contractors within and adjacent to the site and shall permit reasonable access to the site and make available all reasonable facilities and assistance for the completion of such adjoining work.

In the event of any interference between the operations of CONTRACTOR and any utility owner or other contractor or subcontractor, the ARCHITECT shall in good faith assess and determine the most appropriate sequence of activities to be performed in order to expedite the completion of the entire project including any competing or conflicting work and such determination by the ARCHITECT shall be final and conclusive. Any delay due to the unavailability of any part of the site caused by the interference of a conflict between CONTRACTOR and any utility owner or other contractor or subcontractor shall be compensated for solely by an adjustment to the Contract Times and the CONTRACTOR waives any claim against OWNER or ARCHITECT.

#### 4.03 DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

- A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:
1. Is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
  2. Is of such a nature as to require a change in the Contract Documents; or
  3. Differs materially from that shown or indicated in the Contract Documents; or

4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

Then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER, Owner's representative and ARCHITECT in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *ARCHITECT's Review:* After receipt of written notice as required by paragraph 4.03.A, ARCHITECT will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ARCHITECT's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must meet any one or more of the categories described in paragraph 4.03.A; and
- b. With respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

- a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
- b. The existence of such condition could reasonably have been discovered

or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

- c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.
3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefore as provided in paragraph 10.05. However, OWNER, ARCHITECT, and ARCHITECT's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of ENGINEER's, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

#### 4.04 UNDERGROUND FACILITIES

A. *Shown or Indicated:* 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, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ARCHITECT shall not be responsible for the accuracy or completeness of any such information or data; and
2. The cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:
  - a. Reviewing and checking all such information and data,
  - b. Locating all Underground Facilities shown or indicated in the Contract Documents,
  - c. Coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

- d. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ARCHITECT. ARCHITECT will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.
2. If ARCHITECT concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 REFERENCE POINTS

- A. OWNER shall provide ENGINEERING surveys to establish reference points for construction, which in ARCHITECT's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ARCHITECT whenever any reference point or property monument is lost or destroyed or requires relocation

because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 HAZARDOUS ENVIRONMENTAL CONDITION AT SITE

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ARCHITECT in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ARCHITECT or any of ARCHITECT's Consultants with respect to:

1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work

in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ARCHITECT (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ARCHITECT concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.
  
- F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.
  
- G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, Construction Manager, ARCHITECT, ARCHITECT's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.G shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, Construction Manager ARCHITECT, ARCHITECT's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.H shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
  
- I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

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**ARTICLE 5 - BONDS AND INSURANCE**

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5.01 PERFORMANCE, PAYMENT, AND OTHER BONDS

- A. Unless otherwise required by the Supplementary Conditions, CONTRACTOR shall furnish a performance and payment Bond or separate Bonds, in an amount at least equal to one hundred percent of the Contract Price as security for the full and faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents including the payment of all persons performing labor or furnishing material in connection therewith.

The Bonds shall be the most recent AIA Document or in such other form as OWNER shall approve. CONTRACTOR shall also furnish such other Bonds as may be required by the Contract Documents.

- B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
  
- C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of New York or it ceases to meet the

requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

#### 5.02 LICENSED SURETIES AND INSURERS

- A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of New York to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

#### 5.03 CERTIFICATES OF INSURANCE

- A. CONTRACTOR shall obtain at its own cost and expense and deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) for the coverages and amounts which CONTRACTOR is required to purchase and maintain. If at any time any of the policies required herein shall be or become unsatisfactory to the OWNER, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the OWNER, the CONTRACTOR shall, upon notice to that effect from the OWNER, promptly obtain a new policy and submit the policy or a certificate thereof to the Office of General Counsel of the OWNER, for approval. Upon failure of the CONTRACTOR to furnish, deliver and maintain such insurance, the Agreement, at the election of the OWNER may be declared suspended, discontinued or terminated. Failure of the CONTRACTOR to take out or maintain any required insurance shall not relieve the CONTRACTOR for any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the CONTRACTOR concerning indemnification. All property losses shall be made payable to and adjusted with the OWNER.
- B. CONTRACTOR shall obtain at its own cost and expense and deliver to Construction Manager certificate(s) of insurance, Listing Construction Manager as certificate holder, listing all of the insurance policies and amounts that CONTRACTOR is required to obtain and maintain pursuant to this Contract. Such certificates of insurance shall name Construction Manager as an additional insured.



#### 5.04 CONTRACTOR'S LIABILITY INSURANCE

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable. The CONTRACTOR shall provide proof of the following coverage:

1. Workers' Compensation. Certificate C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law.

State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

(Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, a temporary permit may be issued if the employer completes form C-105.2 in duplicate. A copy of Form C-105.2 is sent to the Workers' Compensation Board, Information Unit for investigation and report).

If the employer is self-insured for Workers' Compensation, it should present a certificate from the New York State Workers' Compensation Board evidencing that fact.

2. Employer's Liability Insurance with a minimum limit of \$1,000,000.
3. General Liability Insurance with a minimum limit of liability (combined single limit) of \$3,000,000 (c.s.l), naming the Westchester County Health Care Corporation as an additional insured. If the Work described in the Contract Documents requires or may include the use of explosives or demolition or trenching, excavation or other underground work, then such coverage shall include an endorsement eliminating any XCU exclusion or other proof that XCU coverage is included. This Insurance shall indicate on the certificate of insurance the following coverages:

- a. Premises - Operations
  - b. Broad Form Contractual
  - c. Independent Contractor and Sub-contractor.
  - d. Products and Completed Operations.
  - e. Excavation Collapse and Underground Hazards (where applicable)
4. Asbestos Abatement and Subcontractors Only. Asbestos Abatement Contractors Liability with a limit of \$2,000,000 per occurrence and aggregate. Coverage shall provide Westchester County Health Care Corporation as additional insured and shall be on an occurrence basis.
5. Hazardous/Contaminated Materials Contractors including Underground Petroleum Storage Tank Contractors and Subcontractors Only Excavation including Removal, Repair, Installation, Testing and Petroleum Remediation Operations. Coverage provide:
- a. Pollution Liability with a combined single limit of \$2,000,000 per occurrence/\$2,000,000 aggregate and shall name Westchester County Health Care Corporation as additional insured.
  - b. Claims-made insurance coverage policies shall contain an extended reporting provision of up to three years after the Work is completed. If coverage is cancelled or not renewed, the Contractor shall purchase the extended reporting provision for a period of three years for any claims made during the Project but reported after the cancellation of coverage.
6. Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the Supplementary Conditions. This insurance shall include for bodily injury and property damage the following coverages:
- a. Owned automobiles
  - b. Hired automobiles
  - c. Non-owned automobiles
  - d. Leased automobiles

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

Westchester Medical Center  
Contract CMC-14574

1. With respect to insurance required by paragraphs 5.04.A.3, 5.04.A.4, 5.04.A.5, and 5.04.A.6 include as additional insured OWNER, Owner's Representative, ARCHITECT, ARCHITECT's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
  
2. All policies and certificates of insurance of the CONTRACTOR shall contain the following clauses:
  - a. Insurers shall have no right to recovery or subrogation against the Westchester County Health Care Corporation or Construction Manager (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance.
  
  - b. The clause "other insurance provisions" in a policy in which the Westchester County Health Care Corporation or Construction Manager is named as an insured shall not apply to the Westchester County Health Care Corporation.
  
  - c. The insurance companies issuing the policy or policies shall have no recourse against the Westchester County health Care Corporation or Construction Manager for payment of any premiums or for assessments under any form of policy.
  
  - d. Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of the CONTRACTOR.
  
3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.04 will so provide);

#### 5.05 OWNER'S LIABILITY INSURANCE

- A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

#### 5.06 PROPERTY INSURANCE

- A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. Include the interests of OWNER, Owner's Representative, CONTRACTOR, Subcontractors, ARCHITECT, ARCHITECT's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;
  2. Be written on a Builder's Risk, "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, boiler and machinery, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
  3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of ENGINEERS and architects);
  4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Owner's Representative and ARCHITECT;
  5. Allow for partial utilization of the Work by OWNER;

6. Include testing and startup; and
  7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER and CONTRACTOR with 30 days written notice to each other additional insured to which a certificate of insurance has been issued.
- B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.
- C. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

#### 5.07 WAIVER OF RIGHTS

- A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, Construction Manager, Owner's Representative, CONTRACTOR, Subcontractors, ARCHITECT, ARCHITECT's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER, Construction Manager and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or

resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work to the extent such losses and damages are satisfied out of the proceeds of such insurance; and, in addition, waive all such rights against Subcontractors, ARCHITECT, ARCHITECT's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused to the extent such losses and damages are satisfied out of the proceeds of such insurance. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

#### 5.08 RECEIPT AND APPLICATION OF INSURANCE PROCEEDS

- A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.
  
- B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection were made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and OWNER's determination shall be final and binding on all parties.

#### 5.09 ACCEPTANCE OF BONDS AND INSURANCE; OPTION TO REPLACE

- A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in

accordance with Article 5 on the basis of nonconformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### 5.10 PARTIAL UTILIZATION, ACKNOWLEDGMENT OF PROPERTY INSURER

- A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

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**ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

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6.01 SUPERVISION AND SUPERINTENDENCE

- A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ARCHITECT in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER, Owner's Representative and ARCHITECT except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have full and complete authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR. Prior to commencement of any Work, the superintendent shall report to the Owner's Representative and to OWNER's Maintenance Control Center, Room E004 on the basement level of Macy Pavilion Grasslands Campus, Valhalla, New York. Thereafter, when visiting the Site or performing work, the superintendent shall first report to the Maintenance Control Center.

6.02 LABOR; WORKING HOURS

- A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without



OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to the Owner's Representative.

- C. All employees of CONTRACTOR or of its Subcontractors, who perform any work or enter onto the Site for any purpose, shall be required to obtain and wear temporary I.D. badges, which shall be issued by OWNER. CONTRACTOR, CONTRACTOR's, Subcontractors and their respective employees shall at all times be subject to and follow the directives of the Westchester Medical Center Security forces and any and all other lawful authorities having jurisdiction.
- D. It is the CONTRACTOR's responsibility to ensure that the wages to be paid and the supplements to be provided comply in all respects with the requirements of applicable law. Each laborer, worker or mechanic employed by the CONTRACTOR, Subcontractors or other persons doing or contracting to do the whole or any part of the Work described in the Contract Documents shall be paid the prevailing wages and provided the supplements (including but not limited to health, welfare and pension benefits) as required by Article 8 (Section 220-223) and Article 9 (230-239) of the New York State Labor Law. The "Schedule of Hourly Rates and Supplements" set forth in the Supplementary Conditions shows the minimum hourly rates of wages which can be paid and the minimum supplements that can be provided as of the date of the schedule. Unless otherwise approved by OWNER, such supplements shall be paid to a federally qualified Pension, Health and Welfare program and New York State Registered Apprentice Training Program.

CONTRACTOR shall not utilize classifications not appearing on the rate sheet except with the consent of the OWNER and then the rate to be paid will be determined by the OWNER based upon the advice of the State Department of Labor.

CONTRACTOR and each and every Subcontractor furnishing or performing any part of the Work shall file with OWNER by delivery to the Owner's Representative a properly completed and signed "CONTRACTOR'S REPORT OF EMPLOYMENT AND WEEKLY AFFIDAVIT" in the form prescribed by OWNER.

- E. CONTRACTOR and each of its Subcontractors shall certify all payrolls related to the Work and shall maintain certified copies of such payrolls at the Site in a suitable location available for inspection. In addition, CONTRACTOR shall maintain for its employees and for each Subcontractor, copies of the following information and records:
1. Record of hours worked by each worker, laborer and mechanic on each day;
  2. Record of days worked each week by each worker, laborer and mechanic;

3. Schedule of occupation or occupations at which each worker, laborer and mechanic on the project is employed during each work day and week;
  4. Schedule of hourly wage rates paid to each worker, laborer and mechanic together with a statement attesting that they have been provided with a written notice, informing them of the prevailing wage requirement for this contract.
- F. The CONTRACTOR and each Subcontractor shall comply in all respects with all applicable requirements of the New York State Labor Law, and any applicable regulations or directives of the New York State Labor Department including the requirement to display posters in a conspicuous location at the site and distribute wallet cards to the employees. These posters and wallet cards will inform employees that they are entitled to receive the prevailing wages and supplements as determined by the Department of Labor and will list the Department of Labor's Public Work field offices, with phone numbers for individuals to call if they believe their rights are being violated.
- G. In accordance with the requirements of New York State Labor Law section 220(3)(e) the CONTRACTOR shall only employ apprentices who are registered under a bona fide New York State Registered Apprentice Training Program.

#### 6.03 SERVICES, MATERIALS, AND EQUIPMENT

- A. Unless otherwise specified in the Contract Documents, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ARCHITECT, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents

- C. CONTRACTOR shall make all required arrangements for delivery and unloading of materials and equipment at the Site. It shall be CONTRACTOR's responsibility to confirm the requirements of any applicable rules, regulations or procedures regarding delivery and unloading at the Site. The dates and times of all such deliveries shall be established in consultation with the Owner's Representative and coordinated and performed in a manner which does not unreasonably interfere with other activities occurring at or adjacent to the Site.

#### 6.04 PROGRESS SCHEDULE

- A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.
  - 1. CONTRACTOR shall submit to the Owner's Representative for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

#### 6.05 SUBSTITUTES AND "OR-EQUALS"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ARCHITECT for review under the circumstances described below.
  - 1. *"Or-Equal" Items:* If in ARCHITECT's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by

ARCHITECT as an “or-equal” item, in which case review and approval of the proposed item may, in ARCHITECT’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. In the exercise of reasonable judgment ARCHITECT determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;
- b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

- a. If in ARCHITECT’s sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an “or equal” item under paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. CONTRACTOR shall submit sufficient information as provided below to allow ARCHITECT to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by ARCHITECT from anyone other than CONTRACTOR.
- c. The procedure for review by ARCHITECT will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ARCHITECT may decide is appropriate under the circumstances.
- d. CONTRACTOR shall first make written application to ARCHITECT for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR’s achievement of

Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available ARCHITECTing, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ARCHITECT in evaluating the proposed substitute item. ARCHITECT may require CONTRACTOR to furnish additional data about the proposed substitute item.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ARCHITECT. CONTRACTOR shall submit sufficient information to allow ARCHITECT, in ARCHITECT's sole discretion, to determine that the substitute proposed be equivalent to that expressly called for by the Contract Documents. The procedure for review by ARCHITECT will be similar to that provided in subparagraph 6.05.A.2.
  
- C. *ARCHITECT's Evaluation:* ARCHITECT will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ARCHITECT will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ARCHITECT's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ARCHITECT will advise CONTRACTOR in writing of any negative determination.
  
- D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.
  
- E. *ARCHITECT's Cost Reimbursement:* ARCHITECT will record time required by ARCHITECT and ARCHITECT's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ARCHITECT approves a substitute item so pro-

posed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ARCHITECT and ARCHITECT's Consultants for evaluating each such proposed substitute.

- F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

#### 6.06 CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- A. CONTRACTOR shall submit to ARCHITECT for acceptance by the OWNER the names and qualifications for each Subcontractor proposing to perform any part of the Work. No Subcontractor shall commence performance of any part of the Work at the Site unless and until accepted by OWNER. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those previously approved by OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection.
- B. OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ARCHITECT to reject defective Work.
- C. CONTRACTOR shall be fully responsible to OWNER and Owner's Representative for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or Owner's Representative and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or Owner's Representative to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity.
- D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

- E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Owner's Representative through CONTRACTOR.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier, which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ARCHITECT. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, Owner's Representative, CONTRACTOR, ARCHITECT, ARCHITECT's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

#### 6.07 PATENT FEES AND ROYALTIES

- A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER, Construction Manager or ARCHITECT its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, Construction Manager, ARCHITECT, ARCHITECT's Consultants, and the officers, directors, partners, employees or agents, and other

consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 PERMITS; LICENSE REQUIREMENTS

A. Permits and Licenses. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

#### B. Electrical License Requirements.

1. If the Project is one where separate prime contracts are required pursuant to the provisions of the New York General Municipal Law, then CONTRACTOR for the electrical portion of the Project shall either hold licenses in the local jurisdictions in which the electrical work is to be performed or shall hold a license in any city in the County of Westchester. For purposes of this requirement, the license must be held either by the owner of the business if the CONTRACTOR is a sole proprietor, by a general partner if the CONTRACTOR is a partnership or by a person owning at least ten percent (10%) of the stock or by an officer if the CONTRACTOR is a corporation.
2. Where the Project does not involve separate bids pursuant to the New York General Municipal Law but where some electrical work is contemplated along with other work, the CONTRACTOR or any person, firm, partnership or corporation engaged to perform said electrical work as Subcontractor shall hold the applicable license in the local jurisdictions in which the electrical work is to be performed or shall hold the applicable license in any city in the County of Westchester. Said license shall be held by either the owner of the firm if a sole proprietorship; by a general partner if a partnership, or by an owner of ten percent or more of the stock or by an officer, if a corporation.



C. Plumbing License Requirements

1. In accordance with the requirements of Chapter 277, Article XV of the Laws of Westchester County, no person shall perform plumbing work under any contract to be performed within the County of Westchester except (i) a licensed Master Plumber; (ii) a certified Journey Level Plumber employed by and under the direction of a licensed Master Plumber; or (iii) an Apprentice Plumber working under the direct supervision and control of a Master Plumber or under the direct supervision and control of a certified Journey level Plumber in the employ of a licensed Master Plumber. In no event shall the OWNER incur any liability to pay for any plumbing work performed in violation of the license requirements of Chapter 277, Article XV of the Laws of Westchester County.
2. If the project is one where separate prime contracts are required pursuant to the provisions of the New York General Municipal Law, then the CONTRACTOR for the plumbing contract portion of the Project must possess a valid Master Plumber's license issued by the Westchester County Board of Plumbing Examiners pursuant to Chapter 277, Article XV of the Laws of Westchester County. Such license must be maintained at all times during the performance of the work contemplated under the contract. The suspension, revocation or the failure to maintain or renew such license shall, in addition to any other right or remedy available to the OWNER is ground for immediate suspension or termination of the contract, effective immediately upon notice.
3. Where the project does not involve separate bids pursuant to the new York General Municipal Law but where some plumbing work is contemplated along with other work, then either the CONTRACTOR or the person, firm, partnership or corporation engaged to perform said plumbing work must possess a valid Master Plumber's license issued by the Westchester County Board of Plumbing Examiners.
4. A restricted Master Plumber's license issued by the Westchester County Board of Plumbing Examiners shall satisfy the requirements of this section provided such restricted license authorizes the Master Plumber to engage in the business of plumbing within the local municipality in which the Work under the contract is to be performed.

6.09 LAWS AND REGULATIONS

- A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ARCHITECT shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.
  
- B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of ARCHITECTs, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.
  
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

#### 6.10 TAXES

- A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with any Laws and Regulations which are applicable to CONTRACTOR during the performance of the Work. Pursuant to Section 1115 of the New York State Tax Law, for capital improvement contracts entered into on or after September 1, 1974, all tangible personal property which will become an integral component of a structure, building or real property of New York State, or any of its political subdivisions or a public benefit corporation, including the Westchester County Health Care Corporation, is exempt from New York State and local retail sales tax and compensating use tax.

Contractor shall exclude dollar amounts for the payment of New York State and Local retail sales tax and compensating use tax, for tangible personal property defined above. CONTRACTOR shall be responsible to file the required Contractor Exempt Purchase Certificates.

## 6.11 USE OF SITE AND OTHER AREAS

### A. *Limitation on Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, Construction Manager, ARCHITECT, ARCHITECT's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, Construction Manager, ARCHITECT, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris during Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 RECORD DOCUMENT

- A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ARCHITECT for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ARCHITECT for OWNER.

#### 6.13 SAFETY AND PROTECTION

- A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. All persons on the Site or who may be affected by the Work;
  2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any

property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ARCHITECT or ARCHITECT's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Architect has issued a notice to OWNER, Construction Manager and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

- C. In accordance with the New York State Labor Law, Section 22a, in the event a silica or other harmful dust hazard is created due to construction operations under the contract, the CONTRACTOR shall install, maintain and keep in effective operation all appliances and methods necessary for the elimination of such silica dust or other harmful dust as have been recommended and approved by State and local authorities. CONTRACTOR shall provide temporary dust barriers to seal off construction area from adjacent used areas of the Site and shall exercise every possible care to avoid damage to existing equipment and adjoining work during demolition, removal and restoration operations.
  
- D. The CONTRACTOR shall comply fully with all the applicable provisions of the following listed governmental regulations and standards, noting that in case of conflict, the CONTRACTOR shall comply with the most stringent rule or regulations:
  - 1. State of New York, Department of Labor, Bureau of Standards and Appeals, Industrial Code Rule 23 "Protection of Persons Employed in Construction and Demolition Work."
  - 2. United States Department of Labor, Bureau of Labor Standards, "Safety and Health Regulations for Construction," as promulgated in accordance with the Occupational Safety and Health Act of 1970, Public Law 91-596; 84 Stat. 1590, Laws of 91<sup>st</sup> Congress - 2<sup>nd</sup> Session.

It shall be the sole responsibility of the CONTRACTOR to ascertain which of the regulations and standards contained in the foregoing listed publications affect its construction activities, and CONTRACTOR shall be solely responsible for any

penalties resulting from his failure to comply with such applicable rules and regulations.

- E. In addition to conforming to the applicable governmental regulations and standards referred to in paragraph 6.13.D, the CONTRACTOR shall conduct his work in accordance with the recommendations contained in the latest edition of the "Manual of Accident Prevention in Construction," as published by the Associated General Contractors of America, Inc. and the most recent safety codes approved by the American Standards Association. In case of the conflict with the referenced governmental regulations and standards, the most stringent regulation, standard or recommendation shall govern.
  
- F. The CONTRACTOR shall abide by such rules and instructions as to fire prevention and control as the authorized representative of the Corporation may prescribe. CONTRACTOR shall at all times provide the proper housekeeping to minimize potential fire hazards, and shall provide approved spark arresters on all steam engines, internal combustion engines and fuels. Free access to fire hydrants and standpipe connections shall be maintained at all times during construction operations, and portable fire extinguishers shall be provided by the CONTRACTOR and made conveniently available throughout the Site. The CONTRACTOR shall also notify its employees of the location of the nearest fire alarm box at all locations where work is in progress.

#### 6.14 SAFETY REPRESENTATIVE

- A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 HAZARD COMMUNICATION PROGRAMS

- A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 6.16 EMERGENCIES

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site

or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give Architect, Owner and Owner's Representative prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Owner's Representative and Architect determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 6.17 SHOP DRAWINGS AND SAMPLES

- A. CONTRACTOR shall submit Shop Drawings to ARCHITECT for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ARCHITECT may require and in the number of copies specified in the Contract Documents or as otherwise reasonably requested by ARCHITECT. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ARCHITECT the services, materials, and equipment CONTRACTOR proposes to provide and to enable ARCHITECT to review the information for the limited purposes required by paragraph 6.17.E.
- B. CONTRACTOR shall also submit Samples to ARCHITECT for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ARCHITECT may require to enable ARCHITECT to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.
- C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ARCHITECT as required by paragraph 2.07, any related Work performed prior to ARCHITECT's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.
- D. *Submittal Procedures*
  - 1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:
    - a. All field measurements, quantities, dimensions, specified performance criteria,

installation requirements, materials, catalog numbers, and similar information with respect thereto;

- b. All materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
  - c. All information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and
  - d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.
  3. At the time of each submittal, CONTRACTOR shall give ARCHITECT specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ARCHITECT for review and approval of each such variation.

E. *ARCHITECT's Review*

1. ARCHITECT will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ARCHITECT. ARCHITECT's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. ARCHITECT's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the



assembly in which the item functions.

3. ARCHITECT's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ARCHITECT's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ARCHITECT has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ARCHITECT relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by ARCHITECT and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ARCHITECT on previous submittals.

6.18 CONTINUING THE WORK

- A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

- A. CONTRACTOR warrants and guarantees to OWNER, ARCHITECT, and ARCHITECT's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:
  1. Abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
  2. Normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by the Owner's Representative or ARCHITECT;
2. Recommendation by the Owner's Representative or ARCHITECT or payment by OWNER of any progress or final payment;
3. The issuance of a certificate of Substantial Completion by the Owner's Representative and ARCHITECT or any payment related thereto by OWNER;
4. Use or occupancy of the Work or any part thereof by OWNER;
5. Any acceptance by OWNER or any failure to do so;
6. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ARCHITECT;
7. Any inspection, test, or approval by others; or
8. Any correction of defective Work by OWNER.

C. CONTRACTOR warrants that all equipment, machinery, appliances, computer hardware, and software, or devices supplied to OWNER are designed to be used prior to, during, and after the calendar Year <<>>, and that it will operate during such time period without error directly or indirectly relating to date data. Specifically, such equipment, machinery, appliances, or devices shall be capable of accurately accepting, displaying, recognizing, and/or processing date data (including, but not limited to, calculating, comparing, and sequencing (from, into, between centuries, and leap year calculations through Year <<2035>> and beyond. It also must operate properly without any interruption due to abnormal ending and/or invalid or incorrect results when processing date data. Upon request, CONTRACTOR shall furnish to OWNER the manufacturer's certification or other appropriate documentation acceptable to OWNER to evidence compliance with the provisions of this Paragraph 6.19C. Regardless of any term or provision herein to the contrary, CONTRACTOR expressly agrees, without any limitations as to liability, to indemnify and hold the OWNER harmless from and against any and all claims, costs, expenses, and

liabilities, including reasonable attorney's fees, which the OWNER may suffer by reason of any breach of the warranty contained in this paragraph.

## 6.20 INDEMNIFICATION

- A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless Owner, Construction Manager, ARCHITECT, ARCHITECT's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:
1. Is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
  2. Is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.
- B. In any and all claims against OWNER, Construction Manager or ARCHITECT or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ARCHITECT and ARCHITECT's Consultants or to the officers, directors, partners,

employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. The preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

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## ARTICLE 7 - OTHER WORK

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### 7.01 RELATED WORK AT SITE

- A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. Written notice thereof will be given to CONTRACTOR prior to starting any such other work; and
  2. If such other work is performed by the utility owner as of right, without the consent or direction of the OWNER, then such work shall be deemed to be beyond OWNER's control and Contractor's sole and exclusive remedy for any delay caused by such work shall be an extension of the contract terms as described in paragraph 12.05.
  3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.
- B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Architect and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

- C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ARCHITECT in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

## 7.02 COORDINATION

- A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
  - 1. The individual or entity that will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  - 2. The specific matters to be covered by such authority and responsibility will be itemized; and
  - 3. The extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

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**ARTICLE 8 - OWNER'S RESPONSIBILITIES**

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8.01 COMMUNICATIONS TO CONTRACTOR

- A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through the Owner's Representative.

8.02 REPLACEMENT OF ARCHITECT

- A. In case of termination of the employment of ARCHITECT, OWNER shall appoint an ARCHITECT whose status under the Contract Documents shall be that of the former ARCHITECT.

8.03 FURNISH DATA

- A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 PAY PROMPTLY WHEN DUE

- A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 LANDS AND EASEMENTS; REPORTS AND TESTS

- A. OWNER's duties in respect of providing lands and easements and providing ENGINEERING surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ARCHITECT in preparing the Contract Documents.

8.06 INSURANCE

- A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property

insurance are set forth in Article 5.

#### 8.07 CHANGE ORDERS

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

#### 8.08 INSPECTIONS, TESTS, AND APPROVALS

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

#### 8.09 LIMITATIONS ON OWNER'S RESPONSIBILITIES

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

#### 8.10 UNDISCLOSED HAZARDOUS ENVIRONMENTAL CONDITION

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.



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## ARTICLE 9 - ARCHITECT'S STATUS DURING CONSTRUCTION

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### 9.01 OWNER'S REPRESENTATIVE

- A. The OWNER will assign a representative during the construction period. Should the Architect be assigned to represent the OWNER, the duties and responsibilities and the limitations of authority of ARCHITECT as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ARCHITECT.

### 9.02 VISITS TO SITE

- A. ARCHITECT will make visits to the Site at intervals appropriate to the various stages of construction as ARCHITECT deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ARCHITECT, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ARCHITECT will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ARCHITECT's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ARCHITECT will keep OWNER and Owner's Representative informed of the progress of the Work and will use all reasonable efforts to guard OWNER against defective Work.
- B. ARCHITECT's visits and observations are subject to all the limitations on ARCHITECT's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ARCHITECT's visits or observations of CONTRACTOR's Work ARCHITECT will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 PROJECT REPRESENTATIVE

- A. Owner may furnish a Resident Project Representative to assist Owner in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. The duties of a Resident Project Representative may, in OWNER'S sole discretion, be performed by the Construction Manager.

#### 9.04 CLARIFICATIONS AND INTERPRETATIONS

- A. ARCHITECT will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ARCHITECT may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

#### 9.05 AUTHORIZED VARIATIONS IN WORK

- A. ARCHITECT may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

#### 9.06 REJECTING DEFECTIVE WORK

- A. ARCHITECT or Owner's Representative will have authority to disapprove or reject Work which they believe to be defective, or that ARCHITECT believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ARCHITECT or Owner's Representative will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

#### 9.07 SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS

- A. In connection with ARCHITECT's authority as to Shop Drawings and Samples, see paragraph 6.17.
- B. In connection with ARCHITECT's authority as to Change Orders, see Articles 10, 11, and 12.
- C. In connection with ARCHITECT's authority as to Applications for Payment, see Article 14.

#### 9.08 DETERMINATIONS FOR UNIT PRICE WORK

- A. Owner's Representative will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ARCHITECT will review with CONTRACTOR the Owner's Representative's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). The Owner's representative's written decision thereon will be final and binding (except as modified by ARCHITECT to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

#### 9.09 DECISIONS ON REQUIREMENTS OF CONTRACT DOCUMENTS AND ACCEPTABILITY OF WORK

- A. ARCHITECT will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ARCHITECT in writing, in accordance with the provisions of paragraph 10.05, with a

request for a formal decision.

- B. When functioning as interpreter and judge under this paragraph 9.09, ARCHITECT will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ARCHITECT pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

#### 9.10 LIMITATIONS ON ARCHITECT'S AUTHORITY AND RESPONSIBILITIES

- A. ARCHITECT will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- B. ARCHITECT's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- C. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ARCHITECT's Consultants, Resident Project Representative, and assistants.

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**ARTICLE 10 - CHANGES IN THE WORK; CLAIMS**

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10.01 AUTHORIZED CHANGES IN THE WORK

- A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved, which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 UNAUTHORIZED CHANGES IN THE WORK

- A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 EXECUTION OF CHANGE ORDERS

- A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ARCHITECT or Owner's Representative (or Written Amendments) covering:
1. Changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;
  2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in

accordance with a Work Change Directive; and

3. Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ARCHITECT or Owner's Representative pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

#### 10.04 NOTIFICATION TO SURETY

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

#### 10.05 CLAIMS AND DISPUTES

- A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to Owner's Representative and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Owner's Representative and the other party to the Contract within 60 days after the start of such event (unless Owner's Representative allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to the Owner's Representative and the claimant within 30 days after receipt of the claimant's last submittal (unless Owner's Representative allows additional time).

- B. *Owner's Representative Decision:* Owner's Representative will render a formal

decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Owner's Representative written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. An appeal from Owner's Representative's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or
  2. If no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from Owner's Representative's written decision is delivered by CONTRACTOR to the Owner's Representative within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.
- C. If Owner's Representative does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

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**ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK**

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11.01 COST OF THE WORK

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained
3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on



the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of Owner's Representative, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, (exclusive of any tax-exempt tangible personal property incorporated into the Work) and for which CONTRACTOR is liable, imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the

Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.
- i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.
- j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, ENGINEERS, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.
- 2. Expenses of CONTRACTOR's principal and branch offices other than

CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
  4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.
- C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ARCHITECT an itemized cost breakdown together with supporting data.

## 11.02 CASH ALLOWANCES

- A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and Owner's Representative. CONTRACTOR agrees that:
1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included

in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

- B. Prior to final payment, an appropriate Change Order will be issued as recommended by ARCHITECT to reflect actual amounts due CONTRACTOR on account of Work covered by allowances and the Contract Price shall be correspondingly adjusted.

### 11.03 UNIT PRICE WORK

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by Owner's Representative subject to the provisions of paragraph 9.08.
- B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.
- C. The quantities shown on the Proposal Sheets opposite items of the work for which unit prices have been requested are approximate estimated quantities, and during the progress of the Project, the OWNER shall have the right to omit portions of the Work, and to increase or decrease the shown approximate estimated quantities, or the scope of the whole Work. The OWNER reserves the right to add to or take from the total amount of the Work up to a limit of thirty (30%) percent of the total amount of the contract based upon the executed contract price for all the specified Work.

The CONTRACTOR waives any claim for anticipated profit or loss of profits because of any difference between the quantities of the various units of work actually done, or of the materials actually furnished, and the original shown estimated quantities. The thirty (30%) percent described in this paragraph refers to the total amount of the contract and not to any individual item. Individual items may be increased or decreased any amount or may be eliminated entirely if so ordered by the Owner's Representative excepting that the total amount of the contract shall not be increased or decreased more than thirty (30%) percent except

by mutual agreement between both parties thereto.

The CONTRACTOR shall be compensated solely by payment for quantities actually furnished to the Project at the unit prices set forth in the Proposal Sheets.

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**ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

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12.01 CHANGE OF CONTRACT PRICE

- A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Owner's Representative and the other party to the Contract in accordance with the provisions of paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03 ); or
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).
- C. *CONTRACTOR's Fee:* The CONTRACTOR's fee for overhead and profit shall be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

- b. For costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;
- c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. No fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. The amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and
- f. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

## 12.02 CHANGE OF CONTRACT TIMES

- A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the Owner's Representative and the other party to the Contract in accordance with the provisions of paragraph 10.05.
- B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

## 12.03 DELAYS BEYOND CONTRACTOR'S CONTROL

- A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

#### 12.04 DELAYS WITHIN CONTRACTOR'S CONTROL

- A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

#### 12.05 DELAYS BEYOND OWNER'S AND CONTRACTOR'S CONTROL

- A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

#### 12.06 DELAY DAMAGES

- A. In no event shall OWNER, Owner's Representative or ARCHITECT be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:
  - 1. Delays caused by or within the control of CONTRACTOR; or
  - 2. Delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.
- B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.





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**ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR  
ACCEPTANCE OF DEFECTIVE WORK**

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13.01 NOTICE OF DEFECTS

- A. Prompt notice of all defective Work of which OWNER or ARCHITECT has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 ACCESS TO WORK

- A. OWNER, Owner's Representative, ARCHITECT, ARCHITECT's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 TESTS AND INSPECTIONS

- A. CONTRACTOR shall give Owner's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
1. For inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
  2. That costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
  3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative

of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Representative the required certificates of inspection or approval.

- D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ARCHITECT's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ARCHITECT.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ARCHITECT or Owner's Representative, it must, if requested by ARCHITECT, be uncovered for observation.
- F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given Owner's Representative or ARCHITECT timely notice of CONTRACTOR's intention to cover the same and Owner's Representative or ARCHITECT has not acted with reasonable promptness in response to such notice.

#### 13.04 UNCOVERING WORK

- A. If any Work is covered contrary to the written request of Owner's Representative or ARCHITECT, it must, if requested by ARCHITECT or Owner's representative, be uncovered for observation and replaced at CONTRACTOR's expense.
- B. If ARCHITECT considers it necessary or advisable that covered Work be observed by ARCHITECT or inspected or tested by others, CONTRACTOR, at ARCHITECT's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ARCHITECT may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the

amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

#### 13.05 OWNER MAY STOP THE WORK

- A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER or Owner's Representative may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 13.06 CORRECTION OR REMOVAL OF DEFECTIVE WORK

- A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner's Representative or ARCHITECT, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

#### 13.07 CORRECTION PERIOD

- A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without

cost to OWNER and in accordance with OWNER's (Owner's Representative) written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.
- C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

#### 13.08 ACCEPTANCE OF DEFECTIVE WORK

- A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ARCHITECT's recommendation of final payment, (ARCHITECT) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ARCHITECT as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance

occurs prior to ARCHITECT's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

#### 13.09 OWNER MAY CORRECT DEFECTIVE WORK

- A. If CONTRACTOR fails within a reasonable time after written notice from Owner's Representative or ARCHITECT to correct defective Work or to remove and replace rejected Work as required by ARCHITECT or Owner's Representative in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ARCHITECT and ARCHITECT's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.
- C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of ARCHITECTs, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

- D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

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**ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

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14.01 SCHEDULE OF VALUES

- A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner's Representative. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 PROGRESS PAYMENTS

A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to Owner's Representative for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR (with proof of payment to subcontractors and suppliers) in a form reasonably satisfactory to OWNER stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.
3. Owner shall withhold from any payment requested in an Application for Payment:
  - a. An amount equal to five percent (5%) of any amount recommended for payment by the Owner's Representative pursuant to paragraph 14.02.B to be



held as retainage in accordance with the requirements of New York General Municipal Law Section 106; and

- b. An amount equal to two hundred percent (200%) of the amount necessary to satisfy any claims, liens or judgments against the CONTRACTOR which have not been suitably discharged.

B. *Review of Applications*

1. Owner's Representative will, within 10 calendar days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing Owner's Representative's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.
2. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative's to OWNER, based on Owner's Representative's observations on the Site of the executed Work and review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:
  - a. The Work has progressed to the point indicated;
  - b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and
  - c. The conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Representative's responsibility to observe the Work.
3. By recommending any such payment Owner's Representative will not thereby be deemed to have represented that: (i) inspections made to check the quality or the

quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Architect in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither Owner's Representative nor ARCHITECT's review of CONTRACTOR's Work for the purposes of recommending payments nor Owner's Representative or ARCHITECT's recommendation of any payment, including final payment, will impose responsibility on ARCHITECT to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ARCHITECT to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.
  
5. Owner's Representative or ARCHITECT may refuse to recommend the whole or any part of any payment if, in the Owner's Representative's or ARCHITECT's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. Owner's Representative or ARCHITECT may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Owner's Representative or ARCHITECT's opinion to protect OWNER from loss because:
  - a. The Work is defective, or completed Work has been damaged, requiring correction or replacement;
  
  - b. The Contract Price has been reduced by Written Amendment or Change Orders;
  
  - c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
  
  - d. ARCHITECT has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Forty five calendar days after presentation of the Application for Payment to OWNER's Finance Department with Owner's Representative or ARCHITECT's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR less any applicable retainage or withheld amounts necessary to satisfy claims, liens and judgments as decided in Paragraph 14.02A.3.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by Owner's Representative because:
  - a. Claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
  - b. There are other items entitling OWNER to a set-off against the amount recommended; or
  - c. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.
2. If OWNER refuses to make payment of the full amount recommended by Owner's Representative or ARCHITECT, OWNER must give CONTRACTOR immediate written notice stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.
3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

E. *Payments to Subcontractors and Suppliers by CONTRACTOR.*

1. CONTRACTOR within seven (7) calendar days of the receipt of any payment from the OWNER, the CONTRACTOR shall pay each of his Subcontractors and suppliers the proceeds from the payment representing the value of the work performed and materials furnished by the Subcontractor and suppliers as reflected in the payment from the OWNER less an amount necessary to satisfy any claims, liens or judgment against the Subcontractor or Supplier which have not been suitably discharged. Within seven (7) calendar days of the receipt of payment from the CONTRACTOR, the Subcontractor or supplier shall pay each of lower tier Subcontractors and suppliers in the same manner as the CONTRACTOR has paid the Subcontractor.

#### 14.03 CONTRACTOR'S WARRANTY OF TITLE

- A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

#### 14.04 SUBSTANTIAL COMPLETION

- A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER, Owner's Representative and ARCHITECT in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that Owner's Representative or ARCHITECT issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, Owner's Representative and ARCHITECT shall make an inspection of the Work to determine the status of completion. If ARCHITECT does not consider the Work substantially complete, ARCHITECT will notify OWNER, Owner's Representative and CONTRACTOR in writing giving the reasons therefor. If ARCHITECT considers the Work substantially complete, ARCHITECT will prepare and deliver to OWNER a tentative certificate of Substantial Completion, which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ARCHITECT as to any provisions of the certificate or attached list. If, after considering such objections, ARCHITECT concludes that the Work is not substantially complete, ARCHITECT will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ARCHITECT considers the Work substantially complete, ARCHITECT will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of

Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ARCHITECT believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ARCHITECT will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ARCHITECT in writing prior to ARCHITECT's issuing the definitive certificate of Substantial Completion, ARCHITECT's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

- B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### 14.05 PARTIAL UTILIZATION

- A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ARCHITECT, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

- 1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ARCHITECT that such part of the Work is substantially complete and request ARCHITECT to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER, Owner's Representative and ARCHITECT in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ARCHITECT to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, Owner's Representative CONTRACTOR, and ARCHITECT shall make an inspection of that part of the Work to determine its status of completion. If ARCHITECT does not consider that part of the Work to be substantially complete, ARCHITECT will notify OWNER and

CONTRACTOR in writing giving the reasons therefor. If ARCHITECT considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

#### 14.06 FINAL INSPECTION

- A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ARCHITECT will promptly make a final inspection with OWNER, Owner's Representative and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 FINAL PAYMENT

##### A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of Owner's Representative and ARCHITECT, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and

an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. *Review of Application and Acceptance*

1. If, on the basis of ARCHITECT's observation of the Work during construction and final inspection, and ARCHITECT's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ARCHITECT is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ARCHITECT will, within ten days after receipt of the final Application for Payment, indicate in writing ARCHITECT's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ARCHITECT will also give written notice to OWNER, Owner's Representative and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ARCHITECT will return the Application for Payment to CONTRACTOR, copy to OWNER and Owner's representative indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due*

1. Forty five days after the presentation to OWNER's Finance Department of the Application for Payment and accompanying documentation, the amount recommended by ARCHITECT and the Owner's Representative will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 FINAL COMPLETION DELAYED

- A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ARCHITECT so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ARCHITECT, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to the Owner's Representative with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.09 WAIVER OF CLAIMS

- A. The making and acceptance of final payment will constitute:
1. A waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and
  2. A waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.



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**ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

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15.01 OWNER MAY SUSPEND WORK

- A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 120 consecutive days by notice in writing to CONTRACTOR and ARCHITECT which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR may be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05 and provided that CONTRACTOR was not in any part responsible for the suspension.

15.02 OWNER MAY TERMINATE FOR CAUSE

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04); or man the job each day and progress the job.
  2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction, including but not limited to the failure of CONTRACTOR in one or more instances to pay the prevailing wages or provide the supplements required under the applicable provisions of the New York State Labor Law.
  3. CONTRACTOR's disregard of the authority of ARCHITECT or Owner's Representative
  4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.
  5. CONTRACTOR fails to pay subcontractors and /or suppliers within 7 days of receipt of payment from OWNER.

- B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of ARCHITECTs, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by Owner's Representative as to their reasonableness and, when so approved by, Owner's Representative incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.
- C. Further, OWNER reserves the right to terminate this agreement in the event it is found that the certification filed by CONTRACTOR in accordance with the New York state Finance Law § 139-j was intentionally false or intentionally incomplete. Upon such finding, the OWNER may exercise its termination right by providing written notification to the CONTRACTOR in accordance with written notification terms of this agreement.
- D. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

#### 15.03 OWNER MAY TERMINATE FOR CONVENIENCE

- A. Upon seven days written notice to CONTRACTOR and ARCHITECT, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination and consistent with the percentage completed as listed on the Contractor's Schedule of Values;;
  2. For expenses sustained prior to the effective date of termination for materials or equipment as required by the Contract Documents in connection with uncompleted Work stored on the jobsite, plus fair and reasonable sums for overhead and profit on such expenses;
  3. For expenses sustained prior to the effective date of termination for materials or equipment as required by the Contract Documents in connection with uncompleted Work in fabrication or completed and stored off site waiting to be delivered to the jobsite, plus fair and reasonable sums for overhead and profit on such expenses;
  4. For reasonable expenses directly attributable to termination including field office demobilization expenses. OWNER will not pay for expenses associated with Contractor's main office overhead including bonds and insurances, attorney's, architects and other professionals and all court or arbitration or other dispute resolution costs incurred in settlement of terminated contracts with subcontractors and suppliers,
- B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 CONTRACTOR MAY STOP WORK OR TERMINATE

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 150 consecutive days by OWNER or under an order of court or other public authority, or ARCHITECT fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails to pay CONTRACTOR any sum finally determined to be due 45 days after receipt by OWNER'S finance department, then CONTRACTOR may, upon fifteen days written notice to OWNER, Owner's Representative and ARCHITECT, and provided OWNER, Owner's Representative or ARCHITECT do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner's Representative or ARCHITECT has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 45 days after receipt of such Application for Payment by OWNER'S finance department to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, fifteen days after written notice to OWNER, Owner's Representative and ARCHITECT, stop the Work until

payment is made of all such amounts due CONTRACTOR.

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**ARTICLE 16 - DISPUTE RESOLUTION**

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16.01 METHODS AND PROCEDURES

- A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

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## ARTICLE 17 - COMPLIANCE WITH OWNER'S POLICIES

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### 17.01 SEXUAL HARASSMENT POLICY

- A. It is the policy of the OWNER to prohibit sex discrimination, including sexual harassment of its employees in any form. The OWNER will take all steps necessary to prevent and stop the occurrence of sexual harassment in the workplace. This policy applies to all OWNERS' employees and all CONTRACTOR personnel. This policy shall apply to the conduct of employees of the CONTRACTOR, its Subcontractors, suppliers and others for whom CONTRACTOR has responsibility with respect to sexual harassment of OWNER'S employees in the workplace. This sexual harassment policy includes, but is not limited to, inappropriate forms of behavior described by the Equal Employment Opportunity Commission. CONTRACTOR shall take all necessary steps to ensure that its employees and those of its Subcontractors, suppliers and others for whom it is responsible fully comply with the OWNER'S Sexual Harassment Policy.
- B. Sexual Harassment refers to behavior that is not welcome, that is personally offensive, that fails to respect the rights of others, that lowers morale and that, therefore, interferes with an employee's work performance and effectiveness or creates an intimidating, hostile or offensive working environment. Sexual advances that are not welcome, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
  2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions, such as promotion, transfer, or termination, affecting such individuals; or
  3. Such conduct has the purpose or effect of reasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

### 17.02 MINORITY PARTICIPATION POLICY

- A. It is the policy of the OWNER to encourage the meaningful and significant participation at all levels (CONTRACTOR, Subcontractor, Suppliers and others) for business enterprises owned by persons or color and women - Minority Business Enterprise (MBE) and Women Business

Enterprise (WBE). The CONTRACTOR is encouraged to use its reasonable efforts to encourage, promote and increase participation of business enterprises owned and controlled by persons of color or women (MBE/WBE) in the Project and to develop a policy to efficiently and effectively monitor such participation.

- B. A business enterprise owned and controlled by women or persons of color shall be construed to mean a business enterprise including a sole proprietorship, partnership or corporation that is: (a) at least 51% owned by one or more persons of color or women; (b) an enterprise in which such ownership by persons of color or women is real, substantial and continuing; (c) an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and (d) an enterprise authorized to do business in this state which is independently owned and operated. In addition, a business enterprise owned and controlled by persons of color or women shall be deemed to include any business enterprise certified as an MBE or WBE pursuant to Article 15-a of the New York State Executive Law and implementing regulations, 9 NYCRR Subtitle N Part 540 et seq., or as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et. seq. and the relevant provisions of the Code of Federal Regulations as amended.

#### 17.03 AFFIRMATIVE ACTION PROVISION

- A. During the performance of the Project, the CONTRACTOR will not discriminate against any disability, marital status, sexual orientation, genetic predisposition or carrier status. CONTRACTOR in accordance with the goals and procedures set forth in its duly established affirmative action plan shall take all reasonable actions necessary to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, sex, national origin, age or disability, marital status, sexual orientation, genetic predisposition or carrier status. Such action shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to include, or require the inclusion of the above provision in any subcontract made pursuant to its contract with the OWNER.

#### 17.04 NEW YORK STATE LABOR LAW REQUIREMENTS

Pursuant to New York State Labor Law § 220-d, the CONTRACTOR expressly agrees:

- (i) That in the hiring of employees for the performance of work under this Agreement or any subcontract or Agreement hereunder, no CONTRACTOR, subcontractor, nor any person acting on behalf of such CONTRACTOR or subcontractor, shall by reason of race, creed, color, national origin, age, sex, disability or marital status, discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates; and
- (ii) That no CONTRACTOR, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, national origin, age, sex, disability or marital status; and
- (iii) That there may be deducted from the amount payable to the CONTRACTOR by the OWNER under this Agreement a penalty of FIFTY (\$50.00) DOLLARS for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provision hereof; and
- (iv) That this Agreement may be canceled or terminated by the OWNER, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of this paragraph 17.04.



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## ARTICLE 18 - MISCELLANEOUS

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### 18.01 GIVING NOTICE

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 18.02 COMPUTATION OF TIMES

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the State of New York, such day will be omitted from the computation.

### 18.03 CUMULATIVE REMEDIES

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 18.04 SURVIVAL OF OBLIGATIONS

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

### 18.05 CONTROLLING LAW

- A. This Contract is to be governed by the internal laws of the State of New York

Westchester Medical Center  
Contract CMC-14574

MACY PAVILION HEAT EXCHANGER HHX-1 96

regardless of any conflict of law rules. Any action or proceeding related to or arising directly or indirectly out of this Agreement shall be commenced and maintained in the Supreme Court, Westchester County or the Federal District Court for the Southern District of New York.

## 0300 SUPPLEMENTARY CONDITIONS

THESE SUPPLEMENTARY CONDITIONS AMEND OR SUPPLEMENT THE GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT AND OTHER PROVISIONS OF THE BIDDING DOCUMENTS AS INDICATED BELOW. ALL PROVISIONS OF THE BIDDING DOCUMENTS SHALL REMAIN IN FULL FORCE AND EFFECT EXCEPT AS EXPRESSLY INDICATED OTHERWISE HEREIN AND NOT BY IMPLICATION SUPPLEMENTED OR AMENDED AS PROVIDED HEREIN.

THE CAPITALIZED TERMS USED IN THESE SUPPLEMENTARY CONDITIONS HAVE THE SAME MEANING AND DEFINITION AS SET FORTH IN THE GENERAL CONDITIONS.

### **1.1 GENERAL CONDITIONS 5.01 PERFORMANCE, PAYMENT AND OTHER BONDS**

Subparagraph 5.01.1 is supplemented as follows:

As security for the faithful performance of the contract and the payment of all obligations arising there under the CONTRACTOR, at its sole cost and expense, shall furnish separate Performance and Payment Bonds each in the amount of 100% percent of the Total Contract Sum or, in the alternative, a single Performance Bond containing appropriate provisions protecting Labor and Material men and providing for a direct right of action with separate Penal sums for the Surety's Performance and Payment obligations, each in the amount of 100% percent of the Total Contract Sum. Such Bond or Bonds shall be in such form as the Owner's General Counsel shall approve, which approval shall not be unreasonably withheld. In no event shall any Bond submitted by CONTRACTOR be construed to limit, enlarge, alter or impair the rights and obligation of OWNER, CONTRACTOR or ARCHITECT as defined in the Contract Documents. Said bonds shall remain in full force and effect during the term of any warranty or guarantee to be furnished hereunder, and in no event for a period of less than one year following the issuance of a final certificate.

### **2.1 LABOR; WORKING HOURS**

Subparagraph 6.02 is Supplemented as follows:

The Schedule of Hourly Wages and Supplements issued by the New York State Department of Labor and applicable to the Work described in the Contract Documents is appended to the end of these Supplementary Conditions and made a part hereof .

### **3.1 GENERAL CONDITIONS 5.03 CERTIFICATES OF INSURANCE**

Subparagraph 5.03.1 is supplemented as follows:

The Additionally Insured are as follows: Architect, Engineer(s), and Construction Manager (as herein noted).



WESTCHESTER COUNTY HEALTH CARE CORPORATION

CONTRACTING QUESTIONNAIRE

PROJECT: WESTCHESTER MEDICAL CENTER
Patient Room Renovations
CONTACT NO. CMC-14574

Read Before Completing Questionnaire
1. Complete All Questions and Sections of this Contracting Questionnaire and attach requested documentation.
2. Please provide copies of OSHA citations received and any explanatory information or documentation.
3. A certified annual financial statement and accountant's review report and notes can be submitted in lieu of completing the financial disclosure in this questionnaire

GENERAL INFORMATION

- 1. NAME OF FIRM
DBA NAME ,IF ANY
MAILING ADDRESS PHONE NO.( )
CITY COUNTY STATE ZIP FAXNO.( )
ACTUAL LOCATION
E-MAIL ADDRESS
2. TYPE OF FIRM (check only one) CORPORATION PARTNERSHIP PROPRIETORSHIP JOINT VENTURE LLC LLP
3. HOW MANY YEARS HAS THE FIRM BEEN IN BUSINESS? # OF YEARS UNDER THE SAME NAME? FORMER NAME:
4. WHAT IS THE FIRM'S BONDING RANGE? \$ SINGLE PROJECT \$ AGGREGATE (ALL PROJECTS)
5. ARE YOU CERTIFIED AS A DBE MBE WBE IF SO, WITH WHOM?
6. DO YOU PARTICPATE IN AN APPRENTICESHIP TRAINING PROGRAM APPROVED BY THE NEW YORK STATE DEPARTMENT OF LABOR? Yes No
If yes, complete the following:

Westchester Medical Center
Contract CMC- 14574
MACY PAVILION HEAT EXCHANGER HHX-1

Program Sponsor(s)	Date Program Approved	Program Trade(s)	Number of Apprentices Graduated from Program for Prior 3 years	Number of Apprentices currently enrolled in Program

Attach a copy of the following documents for the Apprenticeship Training Program

- Registration with the New York State Department of Labor
- Program Sponsor executed agreement the New York State Department of Labor
- Current Affirmative Action Plan, including recent outreach and positive recruitment actives documentation in compliance with Section 811 of the Labor Law

**OWNERSHIP, MANAGEMENT, AFFILIATION**

7. Identify each person who is, or has been within the past five years, an owner of 5.0% or more of the firm's shares, or one of the five largest shareholders or a director, an officer, a partner or a proprietor. Joint ventures: provide information for all firms involved. Fill in name, % owned, office held; indicate by checking Yes or No whether director, officer or partner:

First Name	Last Name	Date of Birth	% Owned	Director		Officer		Title	Partner	
				Yes	No	Yes	No		Yes	No

8. Identify any other firms in which, now or in the past five years, the firm or any of the individuals listed in question six above, either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or as a director, officer, partner or proprietor of said other firm:

Federal ID No.	% Owned	Firm/Company Name	Firm/Company Address

9. Identify any affiliate not listed in your answers to questions 7 and 8. For purposes of this question your firm and another are affiliates when, either directly or indirectly, one controls or has the power to control the other, or a third party or parties controls, or has the power to control both:

Federal Id No.	Company Name	Address

9. Identify any and all shareholders, directors, officers, owners, partners, or proprietors in common between your firm and any firm listed in response to questions 7, 8 or 9:

Federal ID No.	First Name, Last Name	Position	Other Firm

11. List the ten most recent contracts the firm has completed. If less than ten, include most recent subcontracts on projects up to that number:

Agency/Owner, Contact Person & Telephone No.	Contract No.	Prime or Sub	Design Architect and/or Engineer	Award Date	Amount	Date Completed

12. List all current uncompleted construction contracts:

Agency/Owner, Contact Person & Telephone No.	Contract No.	Prime or Sub	Design Architect and/or Engineer	Total Dollar Amount of Company Contracts	Dollar Amount Sublet to Others	Uncompleted Dollar Amount of Company's Contract (or Subcontract)

Average Backlog for Firm's Previous 3 Fiscal Years:

Westchester Medical Center  
 Contract CMC- 14574  
 MACY PAVILION HEAT EXCHANGER HHX-1



13. Gross Sales for Firm's Previous 3 Fiscal Years:

(Estimated total value of uncompleted work on outstanding contracts)

YEAR	Amount	YEAR	Amount
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

14. Has the firm, or any firm listed in response to questions 7,8 or 9, defaulted or been terminated on, or had its surety called upon to complete, any contract awarded within the past five years? NO  YES  If, YES yes, give date(s), agency(ies)/owner(s), project(s), contract numbers, and describe including the result: \_\_\_\_\_

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15. For all contracts within the past five (5) years: (a) list and describe all liens or claims over \$25,000 filed against the firm and remaining undischarged or unsatisfied for more than 90 days; and (b) list and describe all liquidated damages assessed \_\_\_\_\_

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**FINANCIAL INFORMATION**

16. Complete the attached financial statement or attach a copy of the firm's most recent annual financial statement and accompanying notes.

17. For the purpose of this Contract, is any other person, or entity guaranteeing the performance of, or otherwise providing financial assistance to your company? If so state the form of assistance and list the name/firm and federal tax identification of each person or entity

Form of Assistance	Individual Name	Company Name	Federal ID No.	Address

**OTHER INFORMATION**

18. Within the past five years has the firm, any affiliate, any predecessor company or entity, or any person identified in question number 6 above been the subject of any of the following: (respond to each question and describe in detail the circumstances of each affirmative answer; attach additional pages if necessary)

- (a) a judgment of conviction for any business-related conduct constituting a crime under local, state or federal law? No  Yes
- (b) a criminal investigation or indictment for any business-related conduct constituting a crime under local, state or federal law? No  Yes
- (c) a grant of immunity for any business-related conduct constituting a crime under local, state or federal law? No  Yes
- (d) a federal, state or local suspension or debarment? No  Yes
- (e) a rejection of any bid for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid? No  Yes
- (f) a rejection of any proposed subcontract for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid? No  Yes
- (g) a denial or revocation of prequalification? No  Yes
- (h) a voluntary exclusion from bidding/contracting agreement? No  Yes
- (i) any administrative proceeding or civil action seeking specific performance or restitution related to any public works contract except any disputed work proceeding? No  Yes
- (j) an OSHA Citation and Notification of Penalty containing a violation classified as serious? No  Yes
- (k) an OSHA Citation and Notification of Penalty containing a violation classified as willful? No  Yes
- (l) a prevailing wage or supplement payment violation? No  Yes
- (m) a State Labor Law violation deemed willful? No  Yes
- (n) any other federal, state or local citations, Notices, violation orders, pending administrative hearings or proceedings or determinations of a violation of any labor law or regulation? No  Yes
- (o) any criminal investigation, felony indictment or conviction concerning formation of, or any business association with, an allegedly false or fraudulent women's, minority or disadvantaged business enterprise? No  Yes
- (p) any denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status? No  Yes
- (q) rejection of a low bid on a State contract for failure to meet statutory affirmative action or M/WBE requirements? No  Yes
- (r) a consent order with the NYS Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws? No  Yes
- (s) any bankruptcy proceeding? No  Yes
- (t) any suspension or revocation of any business or professional license? No  Yes
- (u) any citations, Notices, violation orders, pending administrative hearings or proceedings or determinations of a violation of:
  - \* federal, state or local health laws, rules or regulations No  Yes
  - \* federal, state or local environmental laws, rules or regulations No  Yes

- \* unemployment insurance or workers compensation coverage or claim requirements
- \* ERISA (Employee Retirement Income Security Act)
- \* federal, state or local human rights laws
- \* federal, state or local security laws?

No	<input type="checkbox"/>	Yes	<input type="checkbox"/>
No	<input type="checkbox"/>	Yes	<input type="checkbox"/>
No	<input type="checkbox"/>	Yes	<input type="checkbox"/>
No	<input type="checkbox"/>	Yes	<input type="checkbox"/>
No	<input type="checkbox"/>	Yes	<input type="checkbox"/>

(v) a request to withdraw a bid submitted to a public owner or any claim of an error on a bid submitted to a public owner?

**CERTIFICATION**

The undersigned recognizes that this questionnaire is submitted for the express purpose of inducing the State of New York or its agencies and instrumentalities to award a contract, or approve a subcontract; acknowledges that the State or its agencies and instrumentalities may in its discretion, by means which it may choose, determine the truth and accuracy of all statements made herein; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete. It is further acknowledged that intentional submission of false or misleading information may constitute a felony under Penal Law Section 175.35 or may constitute a misdemeanor under Penal Law Sections 175.30, 210.35 or 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in a denial of contract award or contract termination.

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Commission Expiration Date

\_\_\_\_\_  
Officer Name (Please Print)

As of (date): \_\_\_\_\_

**PROJECT:** WESTCHESTER MEDICAL CENTER  
Patient Room Renovations  
CONTACT NO. CMC-14574

**ASSETS**

Current Assets

1. Cash				\$ _____
2. Accounts receivable - less allowance for doubtful accounts				\$ _____
Retainers included in accounts receivable			_____	
Claims included in accounts receivable not yet approved or in litigation			_____	
Total accounts receivable			_____	
3. Notes receivable - due within one year			_____	
4. Inventory - materials			_____	
5. Contract costs in excess of billings on uncompleted contracts			_____	
6. Accrued income receivable				
Interest			_____	
Other (list) _____			_____	
_____			_____	
Total accrued income receivable			_____	
7. Deposits				
Bid and plan _____			_____	
Other (list) _____			_____	
_____			_____	
Total deposits			_____	
8. Prepaid Expenses				
Income Taxes			_____	
Insurance			_____	
Other (list) _____			_____	
_____			_____	

Total prepaid expenses \_\_\_\_\_

9. Other current Assets

(list) \_\_\_\_\_

\_\_\_\_\_

Total other current assets \_\_\_\_\_

10. Total Current Assets \$ \_\_\_\_\_

11. Investments

Listed securities-present market value \_\_\_\_\_

Unlisted securities-present value \_\_\_\_\_

Total investments \$ \_\_\_\_\_

12. Fixed Assets

Land \_\_\_\_\_

Building and improvements \_\_\_\_\_

Leasehold Improvements \_\_\_\_\_

Machinery and equipment \_\_\_\_\_

Automotive equipment \_\_\_\_\_

Office furniture and fixtures \_\_\_\_\_

Other (list) \_\_\_\_\_  
 \_\_\_\_\_

Total \$ \_\_\_\_\_

Less: accumulated depreciation \_\_\_\_\_

Total fixed assets - net \_\_\_\_\_

13. Other Assets

Loans receivable - officers \_\_\_\_\_

- employees \_\_\_\_\_

- shareholder \_\_\_\_\_

Cash surrender value of officers' life insurance \_\_\_\_\_

Organization expense - net of amortization \_\_\_\_\_

Notes receivable - due after one year \_\_\_\_\_

Other (list) \_\_\_\_\_  
 \_\_\_\_\_

Total Other Assets \_\_\_\_\_

14. TOTAL ASSETS \_\_\_\_\_

LIABILITIES

Current Liabilities

15. Accounts payable		\$ _____	
16. Loans from shareholders - due within one year		_____	
17. Notes payable - due within one year		_____	
18. Mortgage payable - due within one year		_____	
19. Other payables - due within one year			
(list) _____	\$ _____		
_____	_____		
Total other payables - due within one year		_____	
20. Billings in excess of costs and estimated earning	_____		
21. Accrued expenses payable - salaries and wages	_____		
- payroll taxes	_____		
- employees' benefits	_____		
- insurance	_____		
- other	_____		
Total accrued expenses payable		_____	
22. Dividends payable		_____	
23. Income taxes payable			
- state	_____		
- federal	_____		
- other	_____		
Total income taxes payable		_____	
24. Total Current Liabilities			\$ _____
25. Deferred Income Taxes Payable			
- state	_____		
- federal	_____		
- other	_____		
Total deferred income taxes			_____
26. Long Term Liabilities			
Loans from shareholders - due after one year	_____		
Notes payable - due after one year	_____		
Mortgage - due after one year	_____		

Section – Bid Forms

Other payables - due after one year

(list) \_\_\_\_\_

\_\_\_\_\_  
Total long term liabilities

27. Other Liabilities

(list) \_\_\_\_\_

\_\_\_\_\_  
Total other liabilities

28. TOTAL LIABILITIES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**NET WORTH**

29. Net Worth (if proprietorship or partnership) \$ \_\_\_\_\_

30. Stockholders' Equity

Common stock issued and outstanding \$ \_\_\_\_\_

Preferred stock issued and outstanding \_\_\_\_\_

Retaining earnings \_\_\_\_\_

Total \_\_\_\_\_

Less: Treasury stock \_\_\_\_\_

31. TOTAL STOCKHOLDERS' EQUITY \_\_\_\_\_

32. TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY \_\_\_\_\_

**NOTE: IF ADDITIONAL SPACE IS REQUIRED, PLEASE NOTE AND ATTACH SCHEDULE TO STATEMENT**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 14 .

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

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title



**BID PROPOSAL FORMS**

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**ITEM A.**

BASE BID for Contract CMC - 14574  
for all labor, materials, and equipment necessary for  
the construction of all work shown in construction drawings and specifications  
and perform all related work as indicated in the Contract  
Documents for the Lump Sum \_\_\_\_\_  
\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents.

\$ \_\_\_\_\_

**- PLUS -**

**ITEM B.**

OWNER'S Contingency for authorized  
additional work per Part 3.6 of the Information for bidders

\$ 15,000 \_\_\_\_\_

**TOTAL SUM of Amount Bid for Lump Sum Items**  
**A and B** \_\_\_\_\_ Dollars  
and \_\_\_\_\_ Cents

\$ \_\_\_\_\_

*(Low bidder will be determined from TOTAL SUM amount listed above)*

**MINORITY/WOMEN'S BUSINESS QUESTIONS**

As part of the Westchester County Health Care Corporation's program to encourage the participation of minority/women's business, we request that you answer the questions listed below. If you do not respond, we will assume that you do not wish to be considered as a minority/women's business.

A minority business enterprise is defined as a business of which 51% or more is owned by minorities or, in the case of a publicly owned business, 51% or more of the voting power in shares of the corporation is owned by minorities. Minorities are defined as Blacks, Hispanics, Asians, American Indians, Eskimos and Aleuts.

A women owned business enterprise is defined as a business in which women own at least 51% of the firm, or in the case of a publicly owned business, at least 51% of the stock is owned by citizens or permanent resident aliens who are women.

**QUESTIONS:**

1. Are you a minority business: Yes \_\_\_\_\_ No \_\_\_\_\_  
(Please check either yes or no, as appropriate)

2. Are you a women's business: Yes \_\_\_\_\_ No \_\_\_\_\_  
(Please check either yes or no, as appropriate)

3. What minority group(s) are you?

Answer: \_\_\_\_\_

4. What percentage of the ownership or voting power in share of your business is owned by minorities/women?

Answer: \_\_\_\_\_

5. Please identify by name, minority/women owners of your business and ownership percentage of each.

\_\_\_\_\_  
\_\_\_\_\_

## BIDDERS DECLARATIONS AND NON-COLLUSIVE CERTIFICATE

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

- A. All information identified in this bid is true, accurate and complete; and
- B. The prices in this bid have been arrived at independently, without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor, and
- C. Unless otherwise required by law, the prices that have been quoted in this bid have not been knowingly disclosed by the Bidder prior to the opening, directly or indirectly, to any other competitor, and
- D. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- E. Bidder has informed itself fully of the conditions relating to the work to be performed and acknowledges that the failure to do so will not relieve a successful bidder of the obligation to furnish all material and labor necessary to carry out the provisions of the contract documents and to complete the contemplated work for the consideration set forth in his bid.
- F. The undersigned bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form referenced in the bidding documents and to perform all Work as specified or indicated in the bidding documents for the prices and within the times indicated in this bid and in accordance with the other terms and conditions of the bidding documents.
- G. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- H. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- I. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing

Westchester Medical Center  
Contract CMC- 14574  
MACY PAVILION HEAT EXCHANGER HHX-1

surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of a Hazardous Environmental Condition, if any, which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

- J. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- K. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- L. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.
- M. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the bidding documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- N. Bidder has given ARCHITECT written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by ARCHITECT is acceptable to Bidder.
- O. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- P. Bidder has examined and carefully studied the Bidding Documents; the other related data identified in the Bidding Documents, and the following Addenda, receipt of all of which is hereby acknowledged.

Addendum No.

Addendum Date

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

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

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**AFFIRMATION**

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Bidders Affirms that it understands the requirements of New York State Finance Law §§ 139-j(3) and 139(j)(6)(b) and Certifies that:

- (i) Bidder has to date and hereinafter agrees to comply with all requirements of New York State Finance Law § 139-j and § 139-k;
- (ii) Bidder has to date and hereinafter agrees to comply with all procedures of Westchester County Health Care Corporation relative to permissible Contacts;
- (iii) no gift, consideration or other remuneration has been offered, paid or distributed by or on behalf of Bidder to any employees, officers, directors or any other person affiliated with the Westchester County Healthcare Corporation or their immediate family members as an inducement to influence the award or making of the agreement contemplated and described in this Bid Specification and the Bidder has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full-time salaried employee working solely for the Agency) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this agreement;
- (iv) all information provided to the Westchester County Health Care Corporation in this Bid, including without limitation information with respect to State Finance Law § 139-j and § 139-k, is complete, true and accurate.

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

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

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

Bidder Name: \_\_\_\_\_

Bidder

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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**BID BOND AND CONSENT OF SURETY**

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Issued to: \_\_\_\_\_ (hereinafter the "Bidder"),  
                    Name of Bidder)

for Contract No. CMC-14574 (hereinafter the "Contract").

In consideration of the premises and ONE DOLLAR, paid in hand to it by the Westchester County Health Care Corporation ("Corporation"), the receipt of which is hereby acknowledged, the undersigned Surety, its successors and assigns ("Surety") consents and agrees as follows:

- (i) if the Contract for which the preceding estimate and proposal is made, is awarded to the Bidder by the Corporation, the Surety shall become bound as Surety and guarantor for the faithful performance of the Contract and shall execute and deliver a Performance Bond, in a form acceptable to the Corporation, in the amount of 100% of the total Contract price, or such other amount as may be specified in the Bid documents; and
- (ii) If the Bidder shall, upon award of the Contract to the Bidder, fail or refuse to execute the Contract and furnish the necessary bonds and insurance certificates, the Surety shall, on demand by the Corporation, pay to the Corporation the difference between the amount bid and the amount for which such contract is thereafter awarded, together with the cost to the Corporation of re-letting said Contract, up to the maximum aggregate amount of 10% of the amount bid.

The Surety, for value received, the receipt of which is hereby acknowledged by the Surety, hereby stipulates and agrees that the obligation of the Surety and of its bond shall be in no way impaired, affected or discharged by an extension of time, mutually agreed to by the Corporation and the Bidder, within which the Corporation may award said Contract, and the surety hereby waives notice of any such extension.

Westchester Medical Center  
Contract CMC- 14574  
MACY PAVILION HEAT EXCHANGER HHX-1

**IN WITNESS WHEREOF**, the Surety has set its hand and seal and caused these presents to be signed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

(Name of Surety) \_\_\_\_\_

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

(PLEASE AFFIX SEAL)

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

**Note:** Attach necessary Power of Attorney, Notarial Acknowledgement of Signature, and Surety's Financial Statement.