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**Addendum No. 4
October 30, 2009**

**The City University of New York
Request for Proposals**

**College Laboratory Facilities Construction Management/Design/Build Services
Requirements Contracts
Project Number: CITYW-CUCF-01-09**

Consistent with RFP Section I.C Form of Contract, this Addendum conveys a DRAFT copy of the contract which is available for downloading at www.cuny.edu/constructionsolicitations .

Contact: Michael Feeney, DDCM.ContractsDept@mail.cuny.edu

By signing in the space provided below, the Proposer acknowledges receipt of this Addendum. This Addendum must be signed by an authorized representative of the Proposer and submitted with the Stage Two Submission.

Name of Proposer

Name of Authorized Proposer
Representative

Title

Signature

Date

DRAFT – SUBJECT TO REVISION

City University Construction Fund

The City University of New York,
Department of Facilities Planning,
Construction & Management

College Laboratory Facilities Construction Management/Design/Build Services Requirements Contract Project No. CITYW-CUCF-01-09

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS.....	4
ARTICLE 2 - COMPLIANCE WITH LAWS	7
ARTICLE 3 - TIME OF ESSENCE	7
ARTICLE 4 - AGREEMENT TO SERVE; LIMITATION OF REMEDIES	8
ARTICLE 5 - REPRESENTATIONS AND WARRANTIES.....	8
ARTICLE 6 – TASK ORDER PROCESS	9
ARTICLE 7 - OVERVIEW OF CONSTRUCTION MANAGER'S SERVICES.....	9
ARTICLE 8 – TIME PROVISIONS.....	11
ARTICLE 9 - OWNERSHIP OF DOCUMENTS	12
ARTICLE 10 - CONSTRUCTION WORK.....	13
ARTICLE 11 - CONSTRUCTION MANAGEMENT SERVICES	22
ARTICLE 12 - CHARACTER OF THE WORK	35
ARTICLE 13 - MEANS AND METHODS OF CONSTRUCTION	36
ARTICLE 14 - INSPECTION.....	36
ARTICLE 15 - PROTECTION OF WORK AND OF PERSONS AND PROPERTY.....	36
ARTICLE 16 - REQUEST FOR INFORMATION OR APPROVAL.....	37
ARTICLE 17 - NOTICE AND DOCUMENTATION OF DELAY DAMAGES	37
AND OTHER DAMAGES; PRODUCTION OF FINANCIAL RECORDS.....	38
ARTICLE 18 - DETERMINING ACTUAL DATE OF COMPLETION	39
ARTICLE 19 - EXTENSION OF TIME	39
ARTICLE 20 - OCCUPATION OR USE PRIOR TO COMPLETION.....	39
ARTICLE 21 - CHANGED CONDITIONS.....	40
ARTICLE 22 - ASSIGNMENTS.....	40
ARTICLE 23 – LIABILITY OF THE CONSTRUCTION MANAGER:	41
INDEMNIFICATION AND INSURANCE.....	41
ARTICLE 24 - MONEY RETAINED AGAINST CLAIMS	44
ARTICLE 25 - MAINTENANCE AND GUARANTY.....	45
ARTICLE 26 - AGREEMENT CHANGES.....	46
ARTICLE 27 - AUDIT AND EXAMINATION.....	46

ARTICLE 28 - METHODS OF PAYMENT FOR EXTRA WORK	46
ARTICLE 29 - RESOLUTION OF DISPUTES	48
ARTICLE 30 – RECORD KEEPING FOR EXTRA OR DISPUTED WORK	51
ARTICLE 31 - OMITTED WORK	51
ARTICLE 32 - THE DIRECTOR'S REPRESENTATIVE	52
ARTICLE 33 - THE DIRECTOR.....	52
ARTICLE 34 - NO ESTOPPEL.....	52
ARTICLE 35 - EMPLOYEES.....	52
ARTICLE 36 - NO DISCRIMINATION	53
ARTICLE 37 - EQUAL EMPLOYMENT OPPORTUNITY.....	54
ARTICLE 38 - LABOR LAW REQUIREMENTS	55
ARTICLE 39 - PAYROLL REPORTS	59
ARTICLE 40 - DUST HAZARDS	59
ARTICLE 41 - NOISE CONTROL CODE PROVISIONS.....	59
ARTICLE 42 - PAYMENT TERMS AND CONDITIONS	60
ARTICLE 43 - PROMPT PAYMENT	70
ARTICLE 44 - ACCEPTANCE OF FINAL PAYMENT	70
ARTICLE 45 - RIGHTS OF DIRECTOR TO POSTPONE	71
ARTICLE 46 – TERMINATION FOR CONVENIENCE	71
ARTICLE 47 – DEFAULT, CURE AND TERMINATION FOR CAUSE.....	72
ARTICLE 48 - CLAIMS AND ACTIONS THEREON	74
ARTICLE 49 - SUPPLIES, LABOR, SERVICES, MATERIALS AND TAX EXEMPTION	74
ARTICLE 50 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES.....	76
ARTICLE 51 - RESERVED.....	76
ARTICLE 52 - PARTICIPATION IN AN INTERNATIONAL BOYCOTT	76
ARTICLE 53 - INVESTIGATIONS.....	76
ARTICLE 54 - ALL PRIOR WRITTEN OR ORAL AGREEMENTS EXCLUDED	78
ARTICLE 55 - HEADINGS NOT BINDING	78
ARTICLE 56 - ERRORS.....	78
ARTICLE 57 - UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT.....	78
ARTICLE 58 - ALL LEGAL PROVISIONS DEEMED INCLUDED	78
ARTICLE 59 – WAIVER AND SUSPENSION.....	78
ARTICLE 60 - ALL DEFENSES RESERVED	78
ARTICLE 61 - CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE	79

ARTICLE 62 - SERVICES OF NOTICES	79
ARTICLE 63 - MODIFICATION	80
ARTICLE 64 - MACBRIDE PRINCIPLES PROVISIONS.....	80
ARTICLE 65 – ULTRA LOW SULFUR DIESEL FUEL	81
ARTICLE 66 – ULTRA LOW SULFUR DIESEL FUEL	84
COORDINATED CONSTRUCTION ACT FOR LOWER MANHATTAN.....	84
ARTICLE 67 - VENDEX QUESTIONNAIRES.....	85
ARTICLE 68 - PARTICIPATION BY MINORITY-OWNED AND	85
WOMEN-OWNED BUSINESS ENTERPRISES	85
EXHIBIT A	88
CONTRACT INFORMATION.....	88
EXHIBIT B	89
PROJECT TEAM	84
EXHIBIT C.....	89
FEE CURVE FOR DESIGN SERVICES, FOR PROFIT AND DIRECT SALARY HOURLY RATES.....	89
EXHIBIT D	91
PARTIAL PAYMENT FOR STORED MATERIAL	91
EXHIBIT E	93
FORM OF BID, PERFORMANCE, AND PAYMENT BONDS.....	93
EXHIBIT F	106
ASSIGNMENT OF BONDS	106
EXHIBIT G.....	108
M/WBE REQUIREMENTS	108
EXHIBIT H.....	111
SAFETY REQUIREMENTS.....	111
EXHIBIT I	119
INSURANCE REQUIREMENTS.....	119

The CITY UNIVERSITY CONSTRUCTION FUND ("CUCF"), a public benefit corporation organized and existing pursuant to Article 125-B of the Education Law of the State of New York, with its principal office located at 555 West 57th Street, 10th Floor, New York, New York 10019, acting through the Executive Director ("Director") of the Department of Design, Construction & Management of The City University of New York ("CUNY"), and _____ with offices located at _____ ("Construction Manager"), with each also referred to in this Agreement from time to time as "Party" and collectively as "Parties," agree as set forth herein this _____ day of _____, 2009:

ARTICLE 1 – DEFINITIONS

1.1 "Agreement" shall mean this Agreement executed by the Parties and each of the documents referred to in this section 1.1, whether or not existing in final, approved form at the time of execution of this Agreement. In the event of any difference between or among any terms, provisions, or conditions set forth in any documents referred to in this section 1.1, the term, provision, or condition set forth in any document referred to in this section 1.1, except 1.1.15, in descending order shall prevail and any difference within these shall be reconciled to provide CUCF with the most quantity, best quality and lowest price.

- 1.1.1 The Agreement
- 1.1.2 The Budget Director's Certificate
- 1.1.3 The Construction Documents
- 1.1.4 Exhibit A: Contract Information
- 1.1.5 Exhibit B: Project Team
- 1.1.6 Exhibit C: Design Services Fee Curve, Fee Curve for Profit and Direct Salary Hourly Rates
- 1.1.7 Exhibit D: Partial Payment for Stored Material
- 1.1.8 Exhibit E: Form of Performance and Payment Bonds
- 1.1.9 Exhibit F: Form of Irrevocable Assignment
- 1.1.10 Exhibit G: Minority and Women Business Enterprise ("M/WBE") Requirements
- 1.1.11 Exhibit H: Safety Requirements
- 1.1.12 Exhibit I: Insurance Requirements
- 1.1.13 Schedule of Prevailing Wages
- 1.1.14 Advice of Award
- 1.1.15 Request for Proposals for the Agreement
- 1.1.16 Construction Manager's Proposal submitted for the Agreement
- 1.1.17 All provisions required by law to be inserted in this Agreement, whether actually inserted or not

1.2 "Agency" shall mean a department, division, bureau, board or commission, or a corporation, institution or agency, the expenses of which are paid in whole or in part by CUCF or CUNY.

1.3 "Allowance" shall mean those funds allocated for the payment of specific costs and expenses, including, without limitation, those referred to in Article 42 hereof.

1.4 "Business Day" shall mean a day other than a Saturday or a Sunday, or a holiday on which the executive offices of the Department are not officially open for business.

1.5 "College" shall mean the CUNY College identified in this Agreement.

1.6 "Comptroller" shall mean, as the case may be, the Comptroller of the City of New York, or the Comptroller of the State of New York, or the Comptroller of CUNY, or the Comptroller of CUCF and the respective successor and duly authorized representative of each.

1.7 "Construction Documents" shall mean the final plans, drawings and specifications and all modifications thereto

identified in writing by the Director. Upon such identification, the Construction Documents shall become part of this Agreement, as set forth in Article 1.1 hereof.

1.8 "Consultant" or "Consultant(s)" shall mean anyone engaged by CUCF or the Construction Manager to furnish architectural, engineering, design, or any other services for the Projects.

1.9 "Construction Manager" shall have the meaning ascribed in the signature page of this Agreement.

1.10 "Contract Documents" shall mean all of the various parts of the Agreement referred to in Article 1.1 hereof.

1.11 "Contract Work" shall mean everything required to be furnished and done by the Construction Manager pursuant to the Agreement. Everything required to be furnished and done by the Construction Manager pursuant to any written directive of the Director shall become "Contract Work," whether such directive is the result of negotiation or is unilaterally directed by CUCF, on the date set forth in any such directive by CUCF.

1.12 "Contracting Officer" shall mean the person so designated by the Director from time to time.

1.13 "CUNY" shall mean The City University of New York.

1.14 "CUCF" shall mean The City University Construction Fund.

1.15 "Date of Completion" shall mean the date of the last day of the duration of consecutive calendar days fixed by this Agreement for the Construction Manager to complete the work and achieve Final Acceptance.

1.16 "Director" shall mean the Executive Director of the Department of Design, Construction and Management of CUNY and each duly authorized representative(s).

1.17 "Director's Representative" shall mean the Project Manager designated in writing by the Director from time to time.

1.18 "Department" or "DDCM" shall mean the Department of Design, Construction and Management of CUNY acting by and through the Director thereof, or a duly authorized representative.

1.19 "Drawings" shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the Work as detailed and designated in the Construction Documents.

1.20 "Extra Work" shall mean work not reasonably inferable from the Drawings or Specifications, as defined herein, or in other Contract Documents, and determined by the Director to be necessary for the completion of the Work, and added to this Agreement by written change order, whether as a result of negotiation or unilaterally issued by CUCF.

1.21 "Final Acceptance" shall mean the final written acceptance of all Work required hereunder, as determined by the Director.

1.22 "Government Entity" shall mean the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.

1.23 "Law(s)" shall mean each and every law, rule, regulation, order, or ordinance of any kind whatsoever issued by any Government Entity, applicable to or affecting the Project, the Site(s), the Construction Documents, the Work, or any employee engaged in Work hereunder and any combination of these.

1.24 "Lien" shall mean any and every lien, lease, security interest, or encumbrance of any kind whatsoever

including, but not limited to, a Mechanic's Lien.

1.25 "Materialman" shall mean any person, firm, or corporation, other than employees of the Construction Manager, who or which contracts with the Construction Manager or any Subcontractor to fabricate or deliver, or who actually fabricates or delivers, plant, material or equipment to be incorporated into the Work.

1.26 "Modification" shall mean any written amendment of this Agreement signed by both the Director and the Construction Manager.

1.27 "Project" shall mean the Project for which construction management/build services are required as specified by the Director on a Task Order basis.

1.28 "Project Executive" shall mean the person designated by the Construction Manager to serve as its principal representative with respect to its obligations under the Agreement and to provide, on an as needed basis, executive or management expertise and oversight with respect to the Project. The Project Executive is identified in the Staffing Plan.

1.29 "Project Schedule" shall mean the written plan for completion of the Work within the period that ends on the Date of Completion; it indicates the sequence of all of the portions of the Work and the duration within which each portion of the Work will be completed; and it is established by CUCF, or established by the Construction Manager and approved in writing by CUCF.

1.30 "Safety Standards" shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date hereof through Final Acceptance, pertaining to worker safety and accident prevention applicable to the Project and/or the Work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).

1.31 "Samples" shall mean physical examples or specimens, intended to demonstrate workmanship or the characteristics of materials and equipment and/or to establish standards by which the Work will be judged. "Samples" includes (but is not limited to) raw materials, assemblies, completed items, working components or parts thereof, required under this Agreement or by CUCF to ascertain whether the kind, quality, assembly, construction, workmanship, finish, color, texture, grade or other characteristics of Work submitted by the Construction Manager conforms to the requirements of the Agreement.

1.32 "Shop Drawing" shall mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the Work.

1.33 "Site(s)" shall mean the area(s) upon or in which the Construction Manager's operations hereunder are carried on, and such other areas adjacent thereto as may be designated by the Director from time to time.

1.34 "Specifications" shall mean all of the directions, requirements, and standards of performance applied to the Work as detailed and designated in the Construction Documents.

1.35 "Subcontractor" shall mean any person, firm, or corporation, other than employees of the Construction Manager, who or which contracts with the Construction Manager or his Subcontractors to furnish, or actually furnishes consulting services, labor, or labor and materials, or labor and equipment, at the site or in the performance of any of the Work hereunder. All Subcontractors are subject to the prior written approval of the Director.

1.36 "Substantial Completion" shall mean the written determination by the Director that all required Work is substantially complete. The terms and conditions that must be satisfied to achieve Substantial Completion are set forth in Article 10.4.

1.37 "Task Order" shall mean the order issued by CUCF in accordance with Article 6.

1.37 "Unavoidable Delay" shall mean any delay or obstruction whatsoever in the progress of the Work resulting from any act or event which has had (or may reasonably be expected to have) a material adverse effect on Construction Manager's ability to perform its obligations under this Agreement, if such act or event is beyond the reasonable control of Construction Manager and such act or event was not (and would not have been) separately or concurrently caused by a negligent or willful act or omission of Construction Manager and/or could not have been prevented by reasonable actions on Construction Manager's part. Unavoidable Delay shall include without limitation: acts of God; unforeseeably severe weather conditions; fire, earthquake, explosion, landslide, or flood; epidemic; strikes or lockouts; riots, civil disturbance, insurrection, enemy action, or war; injunctions or orders of any Government Entity; embargoes or blockades.

1.38 "Utilities" shall mean any and all utility services and installations whatsoever including, but not limited to, gas, water, electricity, telephone, other telecommunications, steam, sewer and storm sewer, and all piping, wiring, conduit and/or other fixtures of every kind whatsoever related thereto or used in connection therewith.

1.39 "Work" shall mean all activities required of the Construction Manager to construct and complete timely the Project to the satisfaction of CUCF, including, without limitation, the procurement, furnishing, equipping, using or installing, as the case may be, of all tools, materials, equipment, and incidentals, and administration, hiring, supervision and coordination of its forces, Subcontractors and vendors, that are necessary, proper or incidental to the satisfactory and timely completion of the Project by the Construction Manager, and the satisfactory performance by the Construction Manager of its duties and obligations imposed or inferred by the Agreement. It includes Contract Work and Extra Work.

ARTICLE 2 - COMPLIANCE WITH LAWS

2.1 The Construction Manager shall comply with all local, State and Federal Laws, rules and regulations applicable to this Agreement and to the Work to be done hereunder.

2.2 The Construction Manager shall give or cause to be given all necessary notices, obtain or cause to be obtained all permits, and pay or cause to be paid all fees required in connection with the Work, and comply with all local, state and federal laws, rules and regulations affecting work of this character. In any event of a difference between these laws, rules and regulations and any requirement of this Agreement, such laws, rules and regulations shall take precedence. Nothing herein contained shall, however, be construed as permitting the use of material and equipment of lesser quality than specified hereunder, unless the specified material or equipment, or its use, violates such laws, rules or regulations, and unless and until the Construction Manager receives from the Director express written permission to substitute any material or equipment for that specified herein.

2.3 The Construction Manager shall be responsible for applying for and obtaining the required approvals, certifications, permissions, and authorizations of all federal, state and local agencies having jurisdiction over the subject matter hereof. As provided in Article 10.4 hereof, these are required for a determination of Substantial Completion.

2.4 In Accordance with Section 165 of the State Finance Law, the Construction Manager agrees that it shall not use tropical hardwoods, as defined in Section 165 of the State Finance Law, in the performance of this Agreement, except as the same are permitted by the foregoing provision of law.

ARTICLE 3 - TIME OF ESSENCE

3.1 In performing the Work hereunder, the Construction Manager and CUCF shall place emphasis on considerations which will expedite the construction of the Project consistent with the construction standards and procedures of CUCF. The Construction Manager agrees to use all resources at its command so that it completes the Project expeditiously and timely with its own forces and those of its various Subcontractors; to this end, it shall give constant attention to the adequacy of its own and each Subcontractor's planning, personnel, equipment and the

availability of materials and supplies. Time is of the essence for the performance of the Construction Manager's Work, for the Construction Manager's completion of each interim milestone in the Project Schedule, and for the Construction Manager's completion of the Project.

ARTICLE 4 - AGREEMENT TO SERVE; LIMITATION OF REMEDIES

4.1 CUCF hereby retains the Construction Manager to perform the services and Work hereinafter described, on the terms and conditions specified herein, and the Construction Manager hereby covenants to perform such services and Work. The Construction Manager is familiar with the terms of this Agreement and the unique, intended use of the Project upon completion of construction. The Construction Manager hereby represents that it has the necessary experience, expertise, personnel, and resources to fulfill its obligations under this Agreement competently and efficiently. The Construction Manager agrees to use its best efforts to perform all construction management services necessary or advisable to complete this Project in a manner meeting the highest professional standards in the City of New York.

4.2 The Construction Manager agrees that it can be compensated adequately by money damages for any breach of the Agreement which may be committed by CUCF; the Construction Manager agrees that no default, act or omission of CUCF shall constitute a material breach of the Agreement entitling the Construction Manager to cancel or rescind the same or to suspend or abandon performance thereof; and the Construction Manager hereby waives any and all rights and remedies to which the Construction Manager might otherwise be or become entitled to because of any wrongful act or omission of CUCF, saving only the Construction Manager's right to money damages determinable exclusively pursuant to Article 29 hereof.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

5.1 Responsibility and Competency: The Construction Manager warrants and represents as follows:

5.1.1 that it is financially solvent and sufficiently experienced and competent to perform the Work required by this Agreement, or to cause the same to be performed;

5.1.2 that it is expert in performing the construction management services and that its employees, agents, consultants, suppliers and Subcontractors possess the requisite expertise, skill, experience and financial resources to perform and complete the Work, or its and their respective portion of the Work, as required by this Agreement;

5.1.3 that it is licensed and authorized as may be required by the appropriate agency in the State of New York or the City of New York, as the case may be, to conduct business in the City and State of New York, and to perform its obligations hereunder;

5.1.4 that every professional and Subcontractor whom it retains to perform any of the services or Work shall be authorized to transact business in the State of New York and licensed by the appropriate agency, as required by the preceding representation;

5.1.5 that it will take all steps necessary and advisable to maintain its and its retained professionals' and Subcontractors' authorizations and licenses related to the services and the Work, giving CUCF prompt written notice of any lapse of any such license; and

5.1.6 that (1) it is not in arrears to CUCF, to CUNY, the State or City of New York, or the United States of America, upon debt, contract, or taxes; (2) it is not a defaulter, as surety or otherwise, upon any obligation to CUCF, the State or City of New York; (3) it has not been declared not responsible or disqualified by CUCF, by CUNY, by the State or City of New York, or by any public benefit corporation or agency of the State or New York, or by the United States of America and (4) there is not any proceeding pending relating to the responsibility or qualification of the

Construction Manager to receive public contracts.

5.2 Conflict Of Interest

5.2.1 Construction Manager represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with its performance of this Agreement. Construction Manager further represents and warrants that no person having such interest shall be employed or retained by Construction Manager during the term of this Agreement. No elected official or other officer or employee of the State, the City, DASNY, CUNY or CUCF, nor any person whose salary is payable, in whole or in part, from the City Treasury, or State Funds shall participate in any decision relating to this Agreement which affects that person's personal interest or the interest of any corporation, partnership or association in which the person is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the proceeds thereof.

5.2.2 Construction Manager represents that, after its exercise of due diligence, to the best of its knowledge there exists no actual or potential conflict between the principals, officers and directors of the Construction Manager, and their respective business, financial or familial interests, and its rights and obligations under this Agreement. Construction Manager shall notify CUCF of all changes during the term of this Agreement in any of the interests referred to by this Article. CUCF reserves the right to determine whether any of the interests required to be disclosed by this paragraph will disqualify Construction Manager from performing this Agreement or any part thereof.

5.3 Fair Practices: The Construction Manager and each person signing on behalf of the Construction Manager represents and warrants and certifies, under penalty of perjury, that to the best of its and their respective knowledge and belief:

5.3.1 The prices in this Agreement have been arrived at, and will be arrived at from time to time pursuant to this Agreement, independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor or with any Subcontractor, supplier or professional;

5.3.2 Unless otherwise required by law, the prices which have been quoted in this Agreement and in the proposal submitted by the Construction Manager have not been knowingly disclosed by the Construction Manager prior to the proposal opening, directly or indirectly, to any other proposer or to any other competitor, and

5.3.3 No attempt has been made or will be made by the Construction Manager to induce any other person, partnership, or corporation to restrict competition for the Work.

5.3.4 The fact that the Construction Manager (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not, without more, constitute a disclosure within the meaning of the above.

ARTICLE 6 - TASK ORDER PROCESS

6.1 General: The Construction Manager shall provide, to the satisfaction of CUCF, construction and construction management services in accordance with the Task Order process outlined below. The Construction Manager's services shall be provided with respect to the Project specified in the Task Order. The services the Construction Manager may be required to provide shall be as set forth in Article 42 (Payment Terms and Conditions), or as otherwise specified in the Task Order. The Construction Manager shall not perform services hereunder until CUCF has issued a Task Order.

6.2 Selection Procedure: The selection of the Construction Manager to perform services for a Project pursuant to this Contract shall be in accordance with the procedure set forth below. This selection procedure shall be conducted

prior to issuance of a Task Order.

6.2.1 Request for Proposals for the Project: As the need for services arises, CUCF will identify those Construction Managers eligible to compete for project specific assignments and send them a written description of the assignment and the criteria that will be used for selection. The Construction Managers will have an opportunity to submit a written proposal to the request, including a fee. The proposals will be reviewed and evaluated by CUCF according to the criteria, after which the proposal that best meets the criteria will be selected for the assignment at a fee determined by CUCF to be fair and reasonable.

6.2.2 Construction Manager's Proposal: The Construction Manager shall not be entitled to compensation for costs incurred in connection with the preparation of Proposals for specific Projects.

6.2.3 Non-Issuance: CUCF reserves the right not to request proposals for a Project from the Construction Manager, if CUCF determines that the Construction Manager may be unable to provide the required services in a satisfactory and timely fashion.

6.2.4 Task Orders: CUCF shall issue a Task Order to the Construction Manager selected for the Project. CUCF may issue separate and/or supplementary Task Orders to the Construction Manager for the performance of services for different phases or portions of the Project. Each Task Order issued hereunder shall include the items set forth below, & may specify additional items as appropriate:

- (a) Description of the Project for which services are required
- (b) Design services
- (c) Construction and construction management services to be performed by the Construction Manager
- (c) Project Schedule
- (d) Staffing Plan
- (e) Overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed amount shall be broken down into various amounts and/or allowances, including without limitation the following: (1) Allowance for Design Services, (2) Estimated Fee for Profit, (3) Allowance for Staffing Expenses, (4) Allowance for Construction Services, (5) Allowance for Miscellaneous Expenses, and (6) Allowance for Additional Services.

6.3 Supplementary Task Orders: In the event of any changes to the Task Order, CUCF shall issue a Supplementary Task Order to the Construction Manager. The Construction Manager shall be bound by the terms and conditions of any such Supplementary Task Order issued by CUCF.

6.4 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Task Orders issued hereunder, CUCF may, by issuance of a Supplementary Task Order to the Construction Manager, reallocate such specific allowance amounts.

6.5 Conflicts: In the event of any conflict between a Task Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the scope of services to be performed, the provisions of the Task Order shall take precedence over Article 42 (Payment Terms and Conditions) of this Contract.

6.6 Work by Others: In the event there is a need for construction and construction management and/or consulting services, CUCF reserves the right not to issue a Task Order to the Construction Manager and to have the work performed by another Construction Manager(s), if CUCF, in its sole & absolute discretion, determines that the Construction Manager may be unable to satisfactorily provide the required services in a timely fashion.

6.7 CUCF reserves the right to limit active assignments to two (2) projects per Construction Manager.

6.8 No Right to Reject a Task Order: The Construction Manager shall have no right to reject or decline to perform any Task Order issued under the Contract. Accordingly, any rejection of a Task Order by the Construction Manager, either expressly made or implied by conduct, shall constitute a material breach of this Contract.

ARTICLE 7 - OVERVIEW OF CONSTRUCTION MANAGER'S SERVICES

7.1 The Construction Manager covenants to provide CUCF such services as necessary and required, as authorized in writing by the Director from time to time, for the timely progress of the Work and for the timely completion of the Project. The Construction Manager's services shall include without limitation, design, investigation, planning, bidding, pre-construction (including, without limitation, the tasks referred to in Article 10 hereof), construction, construction management, supervision, coordination and close-out of all Work necessary and required for the Project, to effectuate its timely completion; the services referred to in the preceding clause shall have the meaning used in the trade and practice of the professional construction of first-class buildings within the City of New York. The Construction Manager shall hire by subcontract and purchase order all work and materials necessary for it to meet its obligations under this Agreement; provided that the Construction Manager may hire employees to perform incidental portions of the Work, such as site management and custodial services.

7.2 The Construction Manager shall provide and maintain a payment bond or other security acceptable to the Director. The form of bid bond shall be identical in all respects to the form of bid bond attached hereto in Exhibit E, with no variations, additions, or deletions to such form. In addition, the Construction Manager's payment bond, or other security acceptable to the Director, shall be in an amount not less than that specified at Exhibit A hereof. CUCF shall be named the obligee under the bond and beneficiary of any and all other security.

7.3 CUCF may retain from time to time one or more consultants in relation to this Project, including without limitation, to furnish services throughout the term of this Agreement. The Construction Manager agrees to cooperate with each such consultant with no less than its best efforts.

7.3.1 Without limiting the generality of the duty of the Construction Manager referred to in the prior two sentences, the Construction Manager from time to time will review, and provide CUCF with its written comments upon, the drawings and specifications and other design documents instrumental to the project, including, without limitation, its estimated costs.

7.4 With respect to the Project occupied by CUCF or CUNY during the progress of the Work, the Construction Manager shall continue the performance of the Work in a manner that shall not unreasonably interfere with its use, occupancy, and operation by CUCF or CUNY.

ARTICLE 8 – TIME PROVISIONS

8.1 Term of the Contract: The Contract shall commence as of the date of the advice of award and shall remain in effect for the period set forth in Exhibit A.

8.2 Task Order for the Project: The Task Order for the Project shall commence as of the date of issuance and shall remain in effect until (1) Final Acceptance by the Director of all required construction work for the Project, and (2) completion of all required construction and construction management services for the Project. The time frame for completion of all required construction work and all required construction and construction management services for the Project is set forth in the Project Schedule. The Project Schedule was submitted by the Construction Manager as part of its Proposal for the Project and shall be included in the Task Order. The Project Schedule shall be strictly adhered to by the Construction Manager. When appropriate and directed by the Director, the Project Schedule shall be revised, subject to written approval by the Director. The revised Project Schedule shall be strictly adhered to by the Construction Manager.

8.3 Responsibility for Delay: In any event that any portion of the Project is delayed and not completed within the timeframe or by the date set forth in the original Project Schedule, and in any event the Project is delayed and not completed by the Date of Completion, the Director shall prepare a report analyzing the causes of each delay and determining responsibility for each.

8.3.1 If a report indicates that the Construction Manager, as a result of its actions or inactions, is responsible for a delay, or any portion thereof, the Director shall deduct from any amount due and owing to the Construction Manager under this Agreement, the total amount of the Construction Manager's staffing expenses paid to the Construction Manager for each period of delay, or any portion thereof, for which the Director determines the Construction Manager is responsible.

8.3.2 If any amount due and owing to the Construction Manager under this Agreement is less than the total amount of staffing expenses paid to the Construction Manager for the period of a delay, or any portion thereof, for which the Director determines the Construction Manager is responsible, the Construction Manager shall be liable for and agrees to pay the difference upon demand by the Director.

8.3.3 If the Construction Manager files a dispute regarding its responsibility for a delay, or any portion thereof, the Construction Manager is obligated, while the dispute is pending, to continue performing its obligations under this Agreement without delay or interruption, and, if demanded by the Director, to pay upon demand the amount described in the paragraph above.

8.3.4 The following shall have no relevance to a determination by the Director that the Construction Manager is responsible for a delay, or any portion thereof: (a) approval by the Director of any time extension(s) or (b) approval by the Director of any Project Schedule or revision thereof, and (c) both of these. Any such approval(s) by the Director shall not be referred to or offered in evidence by the Construction Manager or its attorneys in any dispute or proceeding regarding the Construction Manager's responsibility for the delay.

ARTICLE 9 - OWNERSHIP OF DOCUMENTS

9.1. The Construction Manager represents that it may use some of its existing property, such as proprietary business methods, processes, and forms, in performance of the Work ("Property") and that it holds all rights necessary to use the Property. The Construction Manager acknowledges and agrees that its only use of the Property under this Agreement shall be in its performance of the Work and completion of the Project. The Construction Manager hereby grants CUCF, its successors, heirs and assigns, the limited, transferable, perpetual, irrevocable right to use the Property, the right for which the Construction Manager has been fully compensated, only in relation to the Project, without restriction, for example, to the Project's design, construction, use, maintenance, repair, supplementation, modernization, rehabilitation, or transfer.

9.2. All documents, calculations, specifications, diaries, daily records of labor, materials and equipment used, notes, as-built drawings, designs, reports, estimates, schedules, charts, graphs, maps, photographs and all other material created, prepared for or furnished to CUCF by the Construction Manager or its Subcontractor or its supplier, or any combination of them, in the performance of this Agreement and relating to the Project, except for the Property, but including material derived from the Property, ("Materials") shall be the property of CUCF. The Construction Manager hereby expressly waives all right, title and interest it had, has or may have in all of the Materials, and, as required by CUCF from time to time, shall obtain and provide to CUCF written waivers of its own claims and of those of the Construction Manager's Subcontractors and suppliers to the Materials. In addition, all copyrightable Materials shall be "works for hire" (as that term is defined in the copyright laws of the United States) for CUCF, and all copyrights therein are expressly intended by the parties hereto to be wholly owned and the copyright to be held by CUCF. To the extent that any such copyrightable Materials may not, by operation of law, be works for hire, the Construction Manager, on its own behalf, on behalf of the Construction Manager's Subcontractors and suppliers, hereby assigns to CUCF the ownership of copyright in such Materials, and CUCF shall have the right to obtain and hold in its own name copyrights,

registrations and similar protection which may be available in such items. The Construction Manager agrees to give, to cause its staff to give, and to cause its Subcontractors to give, from time to time, CUCF or its designee all assistance reasonably required or advisable to perfect such rights, including, without limitation, executing written assignments of copyright. The Construction Manager represents and warrants that it, its staff and its Subcontractors each and in all combinations are and shall be joint and/or sole author, as the case may be, of any and all Materials, and that the copyrightable Materials are and shall be original works not subject to any prior agreement, lien or other rights.

9.3. The Construction Manager further warrants that the Property and the Materials do not and shall not contain libelous, plagiarized, injurious or other such matter, and that the Property and the Materials do not and shall not infringe any copyright or violate any other right of any person whatsoever. The Construction Manager shall defend with counsel acceptable to CUCF, indemnify and hold CUCF, CUNY, the City of New York, the State of New York, and DASNY harmless against any and all claims, damages or expenses, including, but not limited to, attorney's fees and costs of litigation, arising out of a breach of any such warranty pertaining to copyrightable works.

9.4. The provisions of this Article shall not terminate with the term of this Agreement, shall not be suspended, and shall survive any termination or expiration of it.

ARTICLE 10 - CONSTRUCTION WORK

10.1 General Description of Construction Work: The Construction Manager shall provide all required construction work and materials for the Project only through its Subcontractors and suppliers, except for site and construction management activities. Such construction work shall include the removal and/or remediation of hazardous materials in the area of any required construction and/or demolition, if necessary. Hazardous materials shall include, without limitation, asbestos, methane, and lead.

10.2 Subcontracts for Construction Work: As authorized in a written directive from the Director and on the basis of fully coordinated Construction Documents, the Construction Manager shall enter into subcontracts for all construction work that the Construction Manager requires to complete the Project, but the Construction Manager shall enter into separate subcontracts for all plumbing work, electrical work, and HVAC work required for the Project as provided in this Agreement.

10.2.1 Competitive Bid Procedure for Construction Work: Before entering into any subcontract for construction work, the Construction Manager shall conduct the competitive bid procedure specified herein. Such competitive bid procedure shall be in accordance with all DDCM requirements, including without limitation, the items set forth below:

(a) The Construction Manager shall prepare a Request for Bids ("RFB") for the required construction work and shall submit the same to the Director for review and approval prior to issuance. The RFB shall include the following items:

- (1) Bid Form and Bid Breakdown. If so directed, the Construction Manager shall use the Bid Form provided by DDCM.
- (2) Form of subcontract. Such subcontract shall comply with the requirements set forth herein.
- (3) The RFB shall include, without limitation, requirements applicable to bidders, as specified by DDCM, including without limitation, requirements for Minority and Woman-owned Business Enterprises (M/WBE) participation and construction safety. The Construction Manager shall comply with directions from DDCM regarding the review of requirements included in the RFB. After the receipt of bids, the Construction Manager shall determine bidder compliance with such requirements.
- (4) Each bidder shall be required to submit a bid bond, or other security acceptable to

the Director, with its bid. The form of bid bond shall be identical in all respects to the form of bid bond attached hereto in Exhibit E, with no variations, additions, or deletions to such form. In addition, the RFB shall require that all Subcontractors whose subcontracts are in excess of \$250,000 provide performance and payment bonds, each of which shall be in an amount equal to 100% of the subcontract price and shall name the Construction Manager as obligee thereunder. Such bonds shall be provided by a surety company licensed and authorized to do business in the State of New York. Such bonds shall be identical in all respects to the form of bonds attached hereto as Exhibit E, with no variations, additions, or deletions to such form of bonds. Premiums for required bonds must be included in the Subcontractor's bid price. The Subcontractor shall be required to submit two (2) originals of such bonds, one of which shall be submitted to CUCF by the Construction Manager immediately after receipt. With respect to performance and payment bonds submitted by Subcontractors hereunder, the Construction Manager agrees, immediately upon receipt of the bonds, to execute an irrevocable assignment to CUCF in accordance with the form of assignment attached hereto as Exhibit F. The Construction Manager shall submit such executed assignment to CUCF at the time it submits the original bonds.

(b) The Construction Manager shall comply with General Municipal Law (GML) Sections 101 and 103 with respect to all subcontracts, and, on behalf of CUCF, advertise, bid, including, without limitation, accepting bids, opening bids, and evaluating bids, and award those contracts in accord with such statutes. All Bidders must comply with the following items:

(1) Requirements specified by DDCM, including without limitation, for (a) depositing a sum of \$100 for hard copies of the bid documents (only in paper form, on compact disc, or comparable returnable media), which deposit shall be refunded upon the return of such bid documents in acceptable condition, (b) meeting any apprenticeship program requirements, (c) acceptable responses to any safety questionnaire, and (d) submitting with the bid a bond written by a surety licensed to transact such business in the State of New York. DDCM shall provide forms regarding these requirements. The Construction Manager shall determine bidder compliance with the same.

(2) Criteria for financial capability, responsibility, and experience, including, without limitation:

- (a) Financial capability and availability of appropriate resources
- (b) Technical expertise and experience with satisfactorily completed projects of similar size, scope, and complexity
- (c) Organization, staffing and ability to undertake the Work
- (d) Satisfactory record of performance, confirmed by references
- (e) Satisfactory record of business integrity
- (f) Record of compliance with all laws, rules, regulations, and executive orders applicable to the work
- (g) Demonstration that the bidder has a valid license for the work, unless expressly authorized in writing otherwise by the Director (applicable to electrical and plumbing work only)
- (h) Satisfactory safety record
- (i) Satisfactory record of compliance with M/WBE requirements

(c) The Construction Manager shall advertise the RFB through CUCF in no fewer than two (2) publications of The New York State Contract Reporter and The New York City Record and issue the RFB to all bidders expressing interest. The Construction Manager shall advise the Director in writing, not fewer than five (5) business days in advance of the date and time set for the bid advertising and bid opening. The Construction Manager may not open any bid on such date unless and until the Director's Representative is present for the bid opening.

(d) Firms submitting bids shall be required to complete and submit all forms or documentation the Director may require.

(e) The Construction Manager shall review all bids, select the lowest responsive and responsible bidders, submit to the Director a tabulation of all of the bids received, and identify the recommended bidder and the basis thereof for approval. The Construction Manager shall note if any bid contains an error, any conditions or exclusions, or any combination of these, and provide written notification of the same to the Director. The Construction Manager shall proceed as directed in writing by the Director. CUCF reserves the right to negotiate a lower price with each lowest responsible bidder; the Construction Manager will assist CUCF in such negotiations.

(f) As approved in writing by the Director, the Construction Manager shall award the subcontract to the lowest responsive and responsible bidder, who posts performance and payment bonds written by one or more sureties licensed to transact such business in the State of New York.

(g) Limitation: The Construction Manager shall not employ or otherwise engage, or cause or permit any Subcontractor or sub-subcontractor at whatever tier to employ or otherwise engage (1) the Construction Manager, (2) any subsidiary, affiliate or parent of the Construction Manager, or (3) any person whose immediate family member is employed by the Construction Manager at a salary in excess of ten thousand dollars (\$10,000.00) per annum, to perform work hereunder without the prior written approval of the Director. For purposes of this Section, the term “immediate family member” shall mean a wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, or stepchild.

10.2.2 Subcontract Requirements: Subcontracts between the Construction Manager and Subcontractors for construction work for the Project shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Director.

- (a) Such subcontracts shall require that all labor performed and all material furnished thereunder shall strictly comply with all requirements of this Agreement.
- (b) Each such subcontract shall incorporate the material terms of this Agreement, including all addenda and appendices to it, and the DDCM Safety Requirements. Such subcontracts shall contain provisions approved in advance by the Director regarding, at least: (1) time for completion; (2) assessment of liquidated damages, (3) warranties and/or guarantees, (4) the provision required hereunder pertaining to the resolution of disputes related to this Agreement, (5) M/WBE compliance, and (6) compliance with anti-discrimination provisions.
- (c) Each such subcontract shall require that the Subcontractor who is party to it provide performance and payment bonds, each of which shall be in an amount equal to 100% of the subcontract price, and shall name the Construction Manager as obligee thereunder. Such bonds shall be provided by a surety company licensed and authorized to do business in the State of New York. Such bonds shall be identical in all respects to the form of bonds attached hereto as Exhibit E, with no variations, additions, or deletions to such form of bonds. Premiums for required bonds must be included in the Subcontractor's bid price. The Subcontractor shall be required to submit two (2) originals of such bonds, one of which shall be submitted to CUCF by the Construction Manager immediately after receipt. With respect to performance and payment bonds submitted by Subcontractors hereunder, the Construction Manager agrees, immediately upon receipt of the bonds, to execute an irrevocable assignment in accordance with the form of assignment attached hereto as Exhibit F. The Construction Manager shall submit such executed assignment to CUCF at the time it submits the original bonds. As additional security for the faithful performance of such subcontracts, the Construction Manager shall deduct and retain from all subcontractor progress payments five percent (5%) of the amount certified to be due thereunder.

- (d) Each such subcontract shall require that the Subcontractor carry the types and amounts, proportionate to its subcontract, of insurance set forth in this Agreement and Appendix I hereof. All required policies shall be in accordance with the terms and conditions set forth in this Agreement. Proof of insurance shall be provided to CUCF in accordance with this Agreement.
- (e) Each such subcontract shall contain the provisions set forth in the following articles of this Agreement, and shall require the Subcontractor's compliance with the same.
- (1) Article 10.4 (concerning substantial completion);
 - (2) Article 10.5 (concerning damages for delay and extensions of time);
 - (3) Article 10.6 (concerning payment)
 - (4) Article 28 (concerning method of payment for Extra Work);
 - (5) Article 29 (concerning the Resolution of Disputes);
 - (6) Article 31 (concerning omitted work);
 - (7) Article 38 (concerning Labor Law Requirements);
 - (8) Article 39 (concerning Payroll Reports);
 - (9) Article 42 (concerning method of payment and retained percentages);
 - (10) Article 41 (concerning Noise Control Code Provisions);
 - (11) Article 45 (concerning termination without cause);
 - (12) Article 46 (concerning termination for cause);
 - (13) Article 49 (concerning Supplies, Labor, Services, Materials, and Tax Exemption)
 - (14) Article 51 (concerning Locally Based Enterprise Program);
 - (15) Article 65 (concerning Ultra Low Sulfur Diesel Fuel)
 - (16) Article 66 (concerning Ultra Low Sulfur Diesel Fuel - Consolidated Construction Act); and
 - (17) Article 68 (concerning Participation by Minority-Owned and Women-Owned Business Enterprises).
- (f) Each such subcontract shall contain the same terms and conditions with respect to damage for delay, and not less than the following:
- The [name of the Subcontractor] agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission by CUCF or by any of its representatives, and agrees that for all delays it shall be compensated fully by an extension of time to complete performance of the work, as provided herein.
- (g) In removing all ambiguity concerning the resolution of every dispute between the Construction Manager and its Subcontractors related to the Project, each such subcontract shall contain the provision regarding the resolution of disputes set forth at Article 29 hereof, including, without limitation, the provision regarding the appeal from CUCF decisions as set forth at Article 29 hereof; such provisions shall apply to every dispute between the Subcontractor and the Construction Manager related to the Project. Excluding decisions that are the result of this dispute resolution process and are disputed by the Construction Manager or its Subcontractor, which the process requires to be appealed otherwise, either the Construction Manager or a Subcontractor must commence the resolution of a dispute pursuant to the provisions of this Article upon written notice to the other and to CUCF that such dispute will be resolved by CUCF.
- (h) Such subcontracts shall require that the Subcontractor agree not to make any claim against CUCF, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Construction Manager; provided however, such restrictions shall not apply to (1) demands filed by Subcontractors pursuant to Article 10.6 hereof, or (2) disputes submitted by Subcontractors pursuant to dispute resolution provisions contained in the subcontract, as described in paragraph 10.2.2(g).
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- (i) Such subcontracts shall stipulate that the Subcontractor, without any further notification or other process, give its unconditional consent for its insurance carrier to release directly to CUCF documentation verifying its actual rate for workers' compensation insurance.

10.2.3 Payment to Subcontractors: Payment by the Construction Manager to Subcontractors and suppliers shall be in accordance with the provisions set forth below, in addition to other requirements referred to in other sections of this Agreement:

- (a) The Construction Manager shall pay each Subcontractor and supplier for and on account of work performed or materials delivered to the site in accordance with the terms of the respective subcontract and purchase order. To the extent the Construction Manager has not paid a Subcontractor or supplier before submission of a requisition to pay for the Subcontractor's work or supplier's materials covered by such requisition, the Construction Manager shall pay such Subcontractor for such work and the supplier for such materials within seven (7) business days after the Construction Manager receives payment from CUCF for such work or materials; the Construction Manager shall include in each of its subcontracts and purchase orders a provision requiring the Construction Manager to make such payments within such period. As required by the Director from time to time, the Construction Manager shall submit satisfactory evidence that it has made timely such payments. Independent of any other temporal requirement referred to in this Agreement, time is of the essence to the Construction Manager's payments to each Subcontractor and supplier.
- (b) The Construction Manager shall include on each requisition for payment the following data: the name of each Subcontractor and supplier covered by the requisition, a nominal description of the corresponding work and materials covered, the total value of the subcontract and purchase order, the total amount previously paid to the Subcontractor for work previously requisitioned and, to the extent applicable, the same information respecting the supplier, and the amount, including retainage, to be paid to the Subcontractor for work and to the supplier for materials included in the requisition.
- (c) The Construction Manager shall include with each requisition for payment the following documentation: evidence satisfactory to the Director that payments to laborers covered by such requisition comply with the Labor Law, such as verified payrolls; and releases and waivers of lien rights as to sums received by the respective Subcontractor in payment for the work and supplier for materials, with a reservation of claims identified in such release and waiver.

10.2.3.1 State Bank Account. The Construction Manager shall maintain and fund an account in a bank located within the State of New York into which all payments by the CUCF to the Construction Manager shall be deposited. All payments by the Construction Manager to its Subcontractors and suppliers shall be made only from such account.

10.2.4 Approval of Subcontractors and Suppliers: All Subcontractors and suppliers, and the dollar amounts of their respective subcontracts and purchase orders, are subject to the prior written approval of the Director. If an approved Subcontractor elects to subcontract any portion of its subcontract, the proposed sub-subcontractor and the dollar amount of its sub-subcontract are subject to the prior written approval of the Director. If an approved supplier elects to obtain the covered materials from one or more other suppliers, the proposed suppliers and the dollar amount of each purchase order are subject to the prior written approval of the Director. No Subcontractor or sub-subcontractor shall be permitted on the Site until such written approval as required herein has been obtained. Any proposed change order to any subcontract(s) and any purchase order(s) hereunder are subject to the prior written approval of the Director. The Director's approval of a Subcontractor and of a supplier shall not relieve the Construction Manager of any of its responsibilities, duties, and liabilities hereunder.

10.2.5 Construction Manager's Responsibility for Subcontractors and Suppliers: In the event of default by

any of the Construction Manager’s Subcontractors, the following conditions shall apply:

- (a) The Construction Manager shall not be entitled to any payment whatsoever for any and all expenses, including, without limitation, staffing and/or administrative expenses, incurred by the Construction Manager in connection with the process of defaulting such Subcontractor and/or the bidding and/or other procedures involved in obtaining another Subcontractor to complete the required Work.
- (b) The Construction Manager shall be responsible to compensate CUCF for any and all expenses, including without limitation administrative and/or professional design costs, incurred by CUCF in connection with the process of defaulting such Subcontractor and/or the bidding and/or other procedures involved in obtaining another Subcontractor to complete the required work. The Director shall determine the amount of any such expenses incurred by CUCF and such determination shall be final, binding, and conclusive upon the Construction Manager.

10.3 **Liquidated Damages:** In any event the Construction Manager fails to achieve either Substantial Completion or the Date of Completion and Final Acceptance by the date or within the time specified, as the case may be, in the approved schedule, or any approved extension thereof, the Construction Manager shall pay to CUCF as liquidated damages the sum equal to the amount specified in Exhibit A hereof for liquidated damages times each and every calendar day after such date or time until the Construction Manager achieves the respective Substantial Completion or Date of Completion and Final Acceptance, as the case may be.

10.3.1. The amount of liquidated damages is agreed upon by and between the Construction Manager and CUCF because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages that CUCF would sustain in said event. Such amount is agreed to be in the amount of damages which CUCF or its beneficiaries would sustain. Liquidated damages may be retained from time to time by CUCF.

10.3.2 The Director shall specify and the Construction Manager shall include an amount of liquidated damages that is fair & reasonable for each subcontract with a Subcontractor or purchase order for a supplier.

10.3.3 In each subcontract for construction work, the Construction Manager shall include a provision expressly giving CUCF a right of action against the Subcontractor in the event such Subcontractor fails to pay any liquidated damages determined to be due and owing thereunder.

10.4 **Requirements for Substantial Completion:** Substantial Completion of the required Work shall occur when, in the sole determination of the Director, all of the conditions set forth below have been satisfied.

- (a) Construction Manager has obtained and delivered to the Director: (1) each required written approval of every agency having jurisdiction over the work, including without limitation, the City of New York Department of Buildings, the Fire Department and the Department of Environmental Protection; and (2) all certificates of inspection for the Work, (3) a temporary Certificate of Occupancy for the Work; and (4) all warranties and guarantees referred to in the Contract Documents.
- (b) Construction Manager has provided all manuals for the operation and maintenance of, and completed all training sessions required for CUCF to use, the equipment and/or systems installed for the Project.
- (c) All utilities specified or required under the Agreement are connected and functioning properly.
- (d) CUCF can use and occupy the facility for the intended use and purpose.
- (e) Construction Manager and the Director’s Representative have agreed in writing upon the Final Punch List and the date for Final Acceptance of all required Work, including completion of all Punch List items, or, if they are unable to agree, the Director’s Representative has prepared and issued in writing to the Construction Manager the Final Punch List and the date of Final Acceptance.
- (f) All Work, except the items on the Final Punch List as approved by the Director’s Representative, is complete in all respects and is in compliance with the Agreement to the satisfaction of the Director’s

- Representative.
- (g) The Director's Representative has received from the Construction Manager a final verified statement of claims as described in Article 42 of the Agreement.
 - (h) The Director's Representative has received from the Construction Manager written certification that Construction Manager has paid all taxes and fees (including real property taxes and income or franchise taxes) due and payable by Construction Manager prior to Substantial Completion.
 - (i) Construction Manager has submitted written certification that all of the foregoing conditions have been satisfied and the Director has approved Construction Manager's certification.

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

10.5 No Damages For Delay; Extensions of Time: The Construction Manager agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission by CUCF or by any of its representatives, and agrees that any such claim shall be fully compensated by an extension of time to complete performance of the Work, as provided herein. If the performance of the Work, either by Construction Manager or by Subcontractors hereunder, is delayed for a reason referred to by Article 10.5.1 herein, the Construction Manager may be allowed a reasonable extension of time. An extension of time for subcontracted work may be granted only by the Director, upon written application by the Construction Manager. The parties agree that, with respect to this Agreement, the Construction Manager may encounter delays attributable to CUCF from time to time, including, without limitation, those which are unexpected and unforeseeable, in the progress of the Work, for which delays the Construction Manager agrees that it shall be fully and wholly compensated for each such delay solely and exclusively by an extension of time to complete performance of the Work, and agrees to make no other claim for damages for such delay. The Construction Manager hereby waives and relinquishes all other damages for delay.

10.5.1 Grounds for Extension: If such written application is made to the Director, the Construction Manager shall be entitled to an extension of time for delay in completion of Work, if such delay is caused solely: (1) by the acts or omissions of CUCF, its officers, agents or employees; or (2) by the act or omissions of other contractors; or (3) by unavoidable delay, as defined in Article 1.35 hereof, or other supervening conditions entirely beyond the control of either party hereto. The Construction Manager shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Director may determine to be due solely to such causes, and then only if the Construction Manager shall have strictly complied with all of the requirements of Articles 8, 16, and 17 hereof.

10.5.2 Extension for Concurrent Causes of Delay: The Construction Manager shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the subcontracted work as determined by the Director, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Construction Manager or of his Subcontractors or materialmen, and would of itself (irrespective of the concurrent causes) have delayed the subcontracted work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. The determination made by the Director shall be binding and conclusive on the Construction Manager. The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Director.

Permitting the Construction Manager to continue with the subcontracted work after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Construction Manager after such time, shall in no way operate as a waiver on the part of CUCF of any of its rights under this Agreement.

10.5.3 Application for Extension of Time: Before the Construction Manager's request for a time extension for subcontracted work may be approved, the Construction Manager must within five (5) days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the Director identifying:

- (a) the Construction Manager; the Subcontractor; the Agreement registration number; and Project description;
- (b) liquidated damage assessment rate, as specified in the subcontract;
- (c) original subcontract bid amount;
- (d) the original subcontract start date and completion date;
- (e) any previous time extensions granted (number and duration); and
- (f) the extension of time requested.

In addition, the application for extension of time shall set forth in detail:

- (a) the nature of each alleged cause of delay in completing the work;
- (b) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
- (c) a statement that the Construction Manager waives all claims except for those delineated in the application, and the particulars of any claims which the Construction Manager does not agree to waive. For time extensions for final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and
- (d) a statement indicating the Construction Manager's understanding that the time extension is granted only for the purpose of permitting continuation of performance and payment for work performed and that CUCF retains its right to conduct an investigation and assess liquidated damages as appropriate.

10.5.4 Determination of Time Extensions: Time extensions for subcontracted work shall be determined in writing by the Director.

10.5.5 Delay Analysis: For extensions of time for final completion payments for subcontracted work, the CUNY construction management staff shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning, and end dates for each such cause of delay, and whether the delays are excusable under the terms of the Agreement). The report shall be made a part of the contract file.

10.5.6 Assessment of Liquidated Damages: In the case of final completion payments for subcontracted work, liquidated damages shall be assessed as determined by the delay analysis. However, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension at final completion, shall operate as a waiver or release of any claim CUCF may have against the Subcontractor for either actual or liquidated damages.

10.6 Payment Guarantee

10.6.1 In the event the terms of this Agreement do not require the Construction Manager or its Subcontractor(s) to provide a payment bond, CUCF shall, in accordance with the terms of this Article, guarantee payment of all lawful demands for: (a) wages and compensation for labor performed and/or services rendered, and (b) materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with CUCF as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of CUCF, the Construction Manager or its Subcontractor(s). For the purpose of this Article 10.6, Subcontractor shall mean any person, firm, or corporation, other than employees of the Construction Manager, who or which contracts with the Construction Manager to furnish, or actually furnishes, labor, or labor and materials, or labor and equipment, at the site or in the performance of any of the Work hereunder.

10.6.2 The provisions of Article 10.6.1 above are subject to the following limitations and conditions.

- (a) The guarantee is made for the benefit of all beneficiaries as defined in Article 10.6.1, above, provided

- that those beneficiaries strictly adhere to the terms and conditions of this Article 10.6.2.
- (b) Nothing in this Article shall prevent a beneficiary providing labor, services or material for the work from suing the Construction Manager or its Subcontractor(s) for any amounts due and owing the beneficiary by the Construction Manager or its Subcontractor(s).
 - (c) All demands made against CUCF pursuant to this Article shall be made within four (4) months from the date payment is due on the invoice or invoices submitted by the beneficiary to the Construction Manager or its Subcontractor(s) for labor or work done or for materials or supplies delivered, or, if the demand is for wages, four (4) months from the date the wages were due to be paid to the beneficiary.
 - (d) All demands made against CUCF by such beneficiary shall be presented to the Director's Representative along with all written documentation concerning the demand which the Director's Representative deems appropriate or necessary, which may include, but shall not be limited to: the subcontract or sub-subcontract; any invoices presented to the Construction Manager or Subcontractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the Construction Manager or Subcontractor and that the demand has not been paid by the Construction Manager or Subcontractor within the time allowed for such payment by the subcontract or sub-subcontract, and copies of any correspondence between the beneficiary and the Construction Manager or Subcontractor concerning such demand. CUCF shall notify the Construction Manager or Subcontractor that a demand has been made. The Construction Manager or Subcontractor shall inform CUCF of any defenses to the demand, and shall forward to CUCF any documents CUCF requests concerning the demand.
 - (e) CUCF shall make payment only if, after considering all defenses presented by the Construction Manager or Subcontractor, it determines that the payment is due and owing to the beneficiary making the demand.
 - (f) CUCF will not initiate the payment process of this Article or make payment on a demand where the beneficiary making the demand has filed a lien against the Work or otherwise sues CUCF prior to receiving a written notice from CUCF that it will not pay the demand.
 - (g) No beneficiary shall be entitled to interest from CUCF, or to any other costs, including but not limited to attorney's fees.

10.6.3 Upon the receipt by CUCF of a demand pursuant to this Article, CUCF may withhold from any payment otherwise due and owing to the Construction Manager under this Agreement an amount sufficient to satisfy the demand.

- (a) In the event CUCF determines that the demand is valid, CUCF shall notify the Construction Manager of such determination and the amount thereof, and direct the Construction Manager to pay immediately such amount to the beneficiary. In the event the Construction Manager, within seven (7) days of receipt of such notification from CUCF, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by the Construction Manager to the beneficiary for the amount of the demand determined by CUCF to be valid. The Construction Manager, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes CUCF, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effect such assignment.
 - (b) In the event that the amount otherwise due and owing to the Construction Manager by CUCF is insufficient to satisfy such demand, CUCF may, at its option, require payment from the Construction Manager of an amount sufficient to cover such demand and exercise any other right to require or recover payment which CUCF may have under Law or this Agreement.
 - (c) In the event CUCF determines that the demand is invalid, any amount withheld pending CUCF's review of such demand shall be paid to the Construction Manager; provided, however, no lien has been filed. In the event a lien has been filed, the terms and conditions set forth in Article 24 shall apply.
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10.6.4 The provisions of this Article shall not prevent CUCF and the Construction Manager from resolving disputes in accordance with the provisions of Article 29 of the General Conditions.

10.6.5 In the event CUCF determines that the beneficiary is entitled to payment pursuant to this Article, such determination and any defenses and counterclaims raised by the Construction Manager shall be taken into account in evaluating the Construction Manager's performance.

10.6.6 Nothing in this Article shall relieve the Construction Manager of the obligation to pay the claims of all persons with valid and lawful claims against the Construction Manager relating to the work.

10.6.7 The Construction Manager shall not require any performance, payment or other bonds of any Subcontractor, unless required by Article 10.2.2.

10.6.8 The payment guarantee made pursuant to this Article shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to the Construction Manager or its Subcontractors in the prosecution of the Work under this Agreement all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against CUCF on the payment guarantee provided by this Article within the one year limitations period set forth in Section 137.

ARTICLE 11 - CONSTRUCTION MANAGEMENT SERVICES

11.1 General: The Construction Manager shall provide, to the satisfaction of the Director, all services necessary and required for the pre-design, design, inspection, bidding, letting of contracts, supervision, management, coordination, close out and all other general administration of all assigned Projects, so the required design and construction work is successfully completed in a timely fashion. The Construction Manager shall provide design and construction management services as directed in writing by the Director. The services to be provided by the Construction Manager shall include without limitation the services set forth in this Article. The Construction Manager shall fully cooperate with representatives of the Director concerning all aspects of all assigned Projects.

11.1.1 Initial Site Report: As authorized in a written directive from the Director, the Construction Manager shall, through its design consultant, prepare an initial site report, including without limitation the following: (1) site history and operating characteristics; (2) examination of all site conditions; (3) verification of all existing site data provided by CUNY; (4) compilation of all site documentation; (5) identification of existing utilities, and (6) interviews with site operational staff. The site report shall be submitted to the Director prior to the commencement of services described below.

11.1.2 Payment for Pre-Design Services: Unless otherwise authorized in a written directive from the Director, payment for pre-design services shall be made from the Allowance for Design Services set forth in Article 42.

11.2 Design Services: The Construction Manager shall, through its design consultant, provide all design services required for the Project, as directed by the Director.

11.2.1 Approval of Consultants and Subconsultants: Professional design services required hereunder shall be provided by persons or firms licensed by the State of New York. All consultants performing such services are subject to the prior written approval of the Director. If an approved consultant elects to subcontract any portion of its subcontract, the proposed subconsultant is subject to the prior written approval of the Director. The Director's approval of a consultant or subconsultant shall not relieve the Construction Manager of any of its responsibilities, duties and liabilities hereunder.

11.2.2 Removal of Consultants: An approved consultant performing professional design services hereunder shall not be removed without the prior written approval of the Director. The Director reserves the right to

require the Construction Manager to remove and replace an approved consultant.

11.2.3 Construction Manager's Responsibility for Consultants: The Construction Manager shall be solely responsible to CUCF for the acts, defaults, errors or omissions of its consultants and of such consultant's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Construction Manager to the extent of its subcontract.

11.2.4 Specific Design Services: Design Services required for the Project shall include without limitation the following:

- (a) Preparation of coordinated final design documents for all required work for the Project (plans, drawings and specifications). Specifications prepared by the manufacturer are not acceptable.
- (b) Obtaining all required regulatory approvals of the design
- (c) Review and approval of shop drawings
- (d) Preparation of supplementary drawings, if necessary
- (e) Preparation of original drawings reflecting as-built conditions

11.2.5 Design Compliance: All required design services shall be in accordance with: (1) criteria provided by CUCF, and (2) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code.

11.2.6 Approvals of Design: Final design documents are subject to: (1) written approval by the Director, and (2) approval by all regulatory agencies whose approval of the design is required, including without limitation the New York City Department of Buildings. All drawings shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the Architect of Record, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.

11.2.7 Review of Design Documents: Throughout the design process, the Construction Manager shall review and comment on the design, with special attention to the following issues: (1) constructability; (2) coordination; (3) economy and efficiency; (4) minimalization of impact on college operations; (5) division of the work for bidding purposes; (6) time of performance; (7) compliance with the required scope of Work; (8) compliance with CUCF criteria, and (9) avoidance of inconsistencies, problems, delays and change orders during the construction process. At the time of submission of final design documents, the Construction Manager shall provide written comments addressing the above issues.

11.2.8 Submission and Approval of Final Design Documents: The provisions set forth below shall apply to the submission, review and resubmission of final design documents.

- (a) Within fourteen (14) consecutive calendar days of submission or resubmission of final design documents, the Director shall: (1) approve the same in writing, or (2) approve the same as noted and indicate whether resubmission is required, or (3) disapprove the same and transmit changes or comments to the Construction Manager.
 - (b) In the event the final design documents are not approved, the Construction Manager shall, within ten (10) consecutive calendar days of receipt of the Director's changes or comments, revise such documents and resubmit the same to the Director for written approval.
 - (c) The day on which the final design documents are actually received by the respective party shall be considered the first consecutive calendar day for the purpose of calculating the submission, resubmission and review times set forth above; provided, however, documents received after 3:00 P.M. shall be deemed received the next consecutive calendar day.
 - (d) Upon resubmission of final design documents, the Construction Manager shall not make any changes from the original submission, unless such changes are in response to comments by the Director or are
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specifically noted in a written cover letter.

11.2.9 Subcontract Requirements: The subcontract(s) between the Construction Manager and the consultant(s) for design services hereunder shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Director.

- (a) Such subcontracts shall require that all design services comply with all criteria and requirements set forth in this Contract.
- (b) Such subcontracts shall contain provisions approved in advance by the Director regarding the time for completion of all required design services.
- (c) Such subcontracts shall require that the consultant carry the following types and amounts of insurance, unless an exemption is expressly authorized in advance in writing by the Director: (1) comprehensive general liability insurance in the minimum amount of \$5,000,000 per occurrence (combined single limit), with CUCF & CUNY named as an additional insured thereunder; (2) worker's compensation insurance, as required by New York State Law; (3) employer's liability insurance, in the minimum amount of \$5,000,000 per occurrence, and (5) professional liability insurance in the minimum amount of \$1,000,000 per occurrence, \$5,000,000 aggregate if the consultant is retained to perform professional services. The subcontract shall require that such professional liability insurance remain in effect for a minimum period of one year following substantial completion of all required work. All policies shall be in compliance with the requirements of Article 23 and shall be issued by companies that meet the criteria set forth in such article. Proof of Insurance shall be provided to CUCF in accordance with Article 23.
- (d) Such subcontracts shall contain a provision regarding the resolution of disputes between the consultant and the Construction Manager. Such provision shall conform to the requirements set forth in Article 10.2.2(g).
- (e) Such subcontracts shall require that the consultant agree not to make any claims against CUCF, CUNY, their officers, agents or employees, by reason of such subcontract or any acts or omissions of the Construction Manager; provided however, such restrictions shall not apply to disputes submitted by consultant pursuant to dispute resolution provisions contained in the subcontract.
- (f) Such subcontracts shall include a provision requiring the subcontractor to make payment to each of its subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth in Article 43.

11.3 Patented and Proprietary Items: The Consultant shall not, without the prior written approval of the Director, specify for the Project, or necessarily imply the required use of any article, product, material, fixture or form of construction, the use of which is covered by a patent, or which is otherwise exclusively controlled by a particular firm or group of firms.

11.3.1 The Construction Manager shall be liable to and hereby agrees to defend, indemnify and hold harmless CUCF & CUNY against all claims against CUCF &/or CUNY for infringement of any copyright or patent rights of systems, graphs, charts, designs, drawings or specifications furnished by the Construction Manager in the performance of this Contract.

11.4 Indemnification: The Construction Manager shall indemnify and hold CUCF & CUNY harmless from any and all claims or judgments for damages and from costs and expenses to which CUCF &/or CUNY may be subjected or which it may suffer or incur arising out of any error, omission or negligent act in the performance of pre-design or design services.

11.5 Design Fee: For the performance of all required Design Services for each assigned Project, the Construction Manager agrees to pay and the Consultant agrees to accept a total Design Fee, determined by CUCF in accordance with the provisions set forth below. The Design Fee shall be deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultant(s) in the performance of all required Design Services for each assigned Project, including all expenses related to management, overhead and any anticipated profit.

11.5.1 The services included in the Design Fee shall consist of all services required for the Project, except as otherwise provided in paragraph (3) below. The services that may be included in the Design Fee shall include, without limitation, the services set forth below.

- (a) Architectural Design Services
- (b) Structural Engineering Design Services
- (c) Electrical Engineering Design Services
- (d) HVAC and Fire Protection Design Services
- (e) Plumbing Design Services
- (f) Interior Design Services
- (g) Cost Estimating Services

11.5.2 The services set forth below are not included in the Design Fee.

- (a) Any services which (i) are not listed above, and (ii) are expressly excluded from the Design Fee, as specified in the Task Order.
- (b) Additional Professional Services, including without limitation the services set forth below:

- Art and Object Conservation Services
- Architectural and Decorative Metals Conservation Services
- Interior Finishes and Decorative Elements Conservation Services
- Archeological Services

11.5.3 Calculation of Design Fee: The Design Fee shall be calculated as a percent of the total estimated cost of construction for the Project in accordance with the Fee Curve set forth in this Exhibit C. For the purpose of applying the Fee Curve, the total estimate of the cost of construction for the Project shall be the total estimate of the cost of construction of the Project approved in writing by CUCF at the conclusion of Design Development. If the total estimate of the cost of construction falls between the dollar levels designated in the Fee Curve, the Design Fee shall be interpolated on a straight line basis.

- (a) The Design Fee calculated in accordance with the Fee Curve may be subject to adjustment in accordance with the complexity and/or simplicity factors set forth below.
- (b) The Design Fee shall not be subject to adjustment for services performed during overtime hours.

11.5.4 Exclusions from the Estimate: For the purpose of applying the Fee Curve, the total estimate of the cost of construction of the Project shall not include any costs or expenses in connection with the items set forth below.

- (a) New furniture and/or new equipment, unless the Task Order expressly provides otherwise.
- (b) Existing equipment the Consultant is directed by CUCF to use for the Project. In such case, the estimate shall include only the cost of relocating such existing equipment.
- (c) Components of the Project for which design services were provided by CUCF or CUNY.

11.5.5 Complexity / Simplicity Factors: The Design Fee calculated in accordance with the Fee Curve may be subject to adjustment in accordance with the complexity and/or simplicity factors set forth below. The application of such factors, as well as the total percentage increase or decrease in the Design Fee resulting from such application, shall be determined solely by CUCF.

- (a) Complexity Factors: In the event CUCF determines that any of the complexity factors set forth below applies to the Project, the Design Fee calculated in accordance with the Fee Curve shall be increased by an amount determined solely by CUCF. For each complexity factor that applies to the

Project, the percentage increase shall not exceed the maximum percentage increase set forth below. The total percentage increase in the Design Fee shall be the total of the percentage increase for each applicable factor.

	Maximum Percentage Increase
(1) Completeness of Existing Plans	10%
(2) Complex Phasing	10%
(3) Special Building Type Requiring Expertise	15%
(4) Landscape Architectural Design Services	10%
(5) Complex Adaptive Reuse Issues	10%
Total Percentage Increase Possible	55%

- (b) **Simplicity Factors:** In the event CUCF determines that any of the simplicity factors set forth herein applies to the Project, the Design Fee calculated in accordance with the Fee Curve shall be decreased by an amount determined solely by CUCF. For each simplicity factor that applies to the Project, the percentage decrease shall not exceed ten (10%) percent. The total percentage decrease in the Design Fee shall be the total of the percentage decrease for each applicable factor. Simplicity factors shall include, without limitation, the following: (1) maintenance work in areas not being altered, (2) non-complex, repetitive work, and (3) work involving only one trade.

11.6 **Staffing Plan:** The Construction Manager shall provide staffing in accordance with the Staffing Plan approved by the Director and included in the Task Order.

11.6.1 **Contents of Staffing Plan:** The Construction Manager's Staffing Plan includes the items set forth below.

- (a) Project Executive, as identified by the Construction Manager in its Proposal for the Agreement
- (b) Key CM Personnel: Required titles and specific individual for each title, as identified by the Construction Manager in its Proposal for the Agreement
- (c) Other CM Personnel: Required titles and specific individual for each title
- (d) Direct Salary Rates per hour for all specified personnel (except Project Executive). Direct Salary Rates shall be in accordance with Article 42.
- (e) total estimated hours for each title
- (f) total estimated amount for each title

11.6.2 **Project Executive:** The Project Executive, identified in Exhibit B, shall serve as the Construction Manager's principal representative with respect to its obligations under this Agreement. Such Project Executive shall be responsible for coordinating the activities of personnel performing services and for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project. The Construction Manager shall not be entitled to reimbursement for services provided by any Project Executive(s). Compensation for services provided by any Project Executive(s) is deemed included in the Multiplier.

11.6.3 **Key Construction Management (CM) Personnel:** The Key CM Personnel, identified in Exhibit B, shall provide all services necessary and required for the inspection, supervision, management, coordination and administration of the Project, so the required construction work is properly executed, completed in a timely fashion and conforms to the requirements of the Construction Documents, as well as to good construction practice.

11.6.4 **Dedicated Staff:** The Construction Manager specifically agrees to assign to the Project for its entire duration, the specific individuals identified in the Staffing Plan (Exhibit B) as the Project Executive and the Key CM Personnel. These individuals were identified by the Construction Manager in its Proposal for the Agreement. Failure by the Construction Manager to provide any of the individuals identified in the Staffing Plan as Project Executive

and/or Key CM Personnel shall be considered a material breach of the Agreement and grounds for termination for cause. Replacement of such Project Executive and/or Key CM Personnel will only be permitted in the following circumstances: (1) if the designated individual is no longer employed by the Construction Manager, or (2) if CUCF does not direct the Construction Manager to commence work on the Project within six (6) months of the date on which the Construction Manager executes the Agreement. Replacement of such Project Executive and/or Key CM Personnel must comply with the conditions set forth below.

11.6.5 Other Construction Management (CM) Personnel: In addition to the Key CM Personnel, other CM personnel were identified by the Construction Manager in its Proposal for the Agreement. Such other CM personnel will provide services that are supportive or ancillary to the services provided by the Key CM Personnel. Replacement of such CM personnel must comply with the conditions set forth below.

11.6.6 Payment for Staffing: The specific personnel identified in the Staffing Plan, except for any Project Executive(s), shall be considered assigned personnel for the purpose of the Construction Manager's entitlement to payment for services performed by such personnel in accordance with Article 42. As specified therein, the Construction Manager shall not be entitled to payment for staffing expenses for: (1) any Project Executive(s), and (2) any personnel not included in the approved Staffing Plan.

11.6.7 Revisions to the Staffing Plan: Any revisions to the Staffing Plan are subject to the prior written approval of the Director.

- (a) Replacement Personnel: No substitutions for assigned personnel shall be permitted unless the proposed replacement has received the prior written approval of the Director. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced.
- (b) Changes by the Director: The Director reserves the right to direct changes to the Staffing Plan, including without limitation, modifying the titles of personnel necessary for the Project and increasing or decreasing the personnel assigned to the Project, based upon the scope of the required Work. The Construction Manager shall increase or decrease the personnel assigned to the Project, as directed by the Director.
- (c) Removal of Personnel: At the Director's request at any time, the Construction Manager shall remove any personnel and substitute another employee of the Construction Manager reasonably satisfactory to the Director. The Director may request such substitution at any time, in his/her sole discretion.
- (d) Revisions Due to Delay: In the event completion of the Project is delayed for any reason, including without limitation, strike, work stoppage, severe weather conditions or other circumstances not due to the fault of the Construction Manager, the Director shall, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The Construction Manager shall be reimbursed for the cost of the staffing it is directed by the Director to maintain. Upon termination of the delay, the Construction Manager shall restore the level of staffing as directed by the Director.

11.6.8 Night Differential / Overtime: The Construction Manager shall provide a statement describing its company policy with respect to payment of a premium for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime). The Construction Manager's statement describing its policy shall indicate the following: (1) whether the policy is consistently applied to all clients; (2) the designated class(s) of employees to whom such policy applies, and (3) the premium or rate of increase to be paid to employees for such services. For the purpose of payment, the Construction Manager's policy regarding payment of a premium for services performed during other than regular business hours is subject to approval by the Director. Approval shall only be given if the policy is reasonable, consistently applied to all clients and in accordance with standard practice in the industry. Payment of a premium for services performed during other than regular business hours is subject to the limitation set forth in Article 42.

11.7 Related Services: Throughout the Project, the Construction Manager shall be responsible for providing the

related services set forth below. Except as otherwise provided below, all costs for such related services are deemed included in the Multiplier.

11.7.1 The Construction Manager shall provide overnight delivery of the following Project documents: (1) bid and Contract Documents; (2) all required submittals, including without limitation shop drawings, material samples and catalogue cuts; (3) change orders; (4) documents with respect to payment, and (5) any other critical communications and/or documents.

11.7.2 The Construction Manager shall provide transportation, including parking and tolls, for the Project Executive(s) and all personnel assigned to the Project, except as otherwise provided below. The transportation provided shall be vehicular, unless the Project site can be easily accessed by public transportation.

- (a) In the event the Construction Manager is directed in advance in writing by the Director to provide services which require long distance travel, the Construction Manager shall be reimbursed for expenses incurred in connection with such long distance travel.
- (b) Long distance travel shall mean travel which is in excess of 125 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the Construction Manager's home office.
- (c) Reimbursement for long distance travel expenses shall be as set forth in Article 42.5.

11.7.3 The Construction Manager shall provide communications equipment and service, including, without limitation, cellular telephones, for the Project Executive(s) and all personnel assigned to the Project. The Construction Manager shall provide the Director with the business land-line and cellular telephone numbers of all personnel it assigns to the Project, and with other contact information for all such personnel, such as email addresses and any beeper numbers.

11.7.4 Where the drawings or the specifications or any other of the Construction Documents establish a standard of performance or quality by identifying any material, article or piece of equipment by reference to a manufacturer's or vendor's name, trade name, catalog number, the make or otherwise, with respect to each submittal that is a proposed substitution, or "equal," for any item so identified or any item otherwise required by the construction contract, the Construction Manager shall provide the Director with its timely written evaluation of the extent, if any, to which such proposed substitution conforms with: (i) the Project design concept; (ii) the performance, the quality and the function of the required item which it will replace, with no loss of performance, quality or function by such substitution; (iii) the durability, maintainability, strength, energy cost, and noise parameters of the required item which it will replace; and, (iv) the cost limitations set by the Total Not-to-Exceed Amount.

11.8 Services During Pre-Construction Phase: The Construction Manager shall provide construction management services during the Pre-Construction Phase, as directed in writing by the Director. Such construction management services shall include without limitation the services set forth below.

11.8.1 Review and evaluate the overall budget for the Project, taking into Account all funds available or to be made available, and identify amounts, including contingencies, available for each major activity, including design, construction, and construction management. The budget for the Project must take into consideration any anticipated increases in the cost of labor and/or material. The Construction Manager shall provide monthly reports to the Director updating the budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete.

11.8.2 Schedule and conduct meetings with representatives of the Director, the Consultant(s), the sponsoring agency, regulatory agencies and any other entities or individuals involved with the Project. The Construction Manager shall prepare minutes of such meetings in a format authorized by the Director and shall distribute such minutes to all attendees.

11.8.3 Prepare correspondence or other communications to the Consultant(s) as required in order to advance the Project.

11.8.4 Take appropriate action to ensure that all required filings with regulatory agencies with respect to the design have been made.

11.8.5 Reports: Provide reports with respect to design documents at various stages of the design process, as directed by the Director. Unless otherwise specified, such reports shall include the items set forth below.

(a) Review of Design Documents: The Construction Manager shall review and provide written comments with respect to design documents for the Project prepared by the Consultant. The Construction Manager's review and comments shall address the issues set forth below.

- (1) constructability;
- (2) coordination;
- (3) economy and efficiency;
- (4) construction methods and materials;
- (5) availability of materials and labor;
- (6) minimalization of impact on agency operations;
- (7) division of the Work for the purpose of bidding, taking into account such factors as the type or scope of Work to be performed, time of performance, availability of labor, community relations, and other pertinent data relating to the various trades involved;
- (8) time of performance;
- (9) compliance with the required scope of Work;
- (10) compliance with criteria set forth in the DDCM Guide for Consultants;
- (11) compliance with DDCM comments;
- (12) avoidance of possible conflicts and overlapping jurisdiction among the Subcontractors performing Work for the Project, including recommended solutions for the elimination of such conflicts or overlaps, and
- (13) avoidance of inconsistencies, problems, delays and change orders during the construction process.

In addition to and without limiting the foregoing, the Construction Manager shall, as part of its review of the design documents, (1) identify any issues that may generate problems during construction; (2) make recommendations for any changes in the Work it considers necessary or desirable, and (3) make any observations or raise any concerns it may have concerning the design or the structural integrity of the same.

(b) Detailed Cost Estimate: As directed in writing by the Director from time to time, the Construction Manager shall provide detailed cost estimates for the Project, based upon design documents prepared by the Consultant.

11.8.6 Prepare Bid and Contract Documents for the Project that are complete and comply with all DDCM requirements. The Construction Manager shall ensure that the Bid and Contract Documents conform with the requirements of this Agreement and include all construction Work. If required for the Project, such General Conditions shall include provisions for temporary facilities necessary to enable the Subcontractors to perform their work. The Construction Manager shall have no responsibility for the preparation of design documents or other documents for which Consultant has responsibility.

11.8.7 During the bidding process for the construction subcontracts, make recommendations to the Director to coordinate the work of the Consultant(s) to assure that any required addenda are promptly issued.

11.8.8 Perform all services with respect to the process of bidding and awarding subcontracts as set forth in Article 10.

11.9 Services During Construction Phase: The Construction Manager shall provide construction management services during the Construction Phase, as directed by the Director. Such construction management services shall include without limitation the services set forth below.

11.9.1 Prior to the commencement of the Work, obtain or verify that each Subcontractor has obtained all necessary permits, certificates, licenses and approvals, for the performance of the Work required by the New York City Building Code, the Electrical Code and all other applicable law, rule and regulation of any government entity. Assure that no Work proceeds in the absence of such necessary permits, certificates, licenses and approvals.

11.9.2 Transmit, or ensure that the Subcontractor(s) have transmitted, timely to the Consultant all required submittals, including, without limitation, shop drawings, material samples, and catalogue cuts. Such submittals shall be as directed in writing by the Director from time to time.

11.9.3 Undertake the following responsibilities with respect to the inspection of the Work:

- (a) Provide technical inspection, supervision, and coordination of the Work on the Project until final completion of the Work and Final Acceptance thereof by the Director, verifying that the materials furnished and Work performed are in accordance with all requirements of the Construction Documents, and that Work on the Project is progressing on schedule.
 - (b) Provide offsite plant inspection of fabricated and/or raw materials to be used on the Project, as directed by the Director, to insure conformance with the material specifications of the Construction Documents.
 - (c) Take appropriate action to prevent the installation of Work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the Construction Documents, and inform Director promptly of such action and the reasons for and outcome of such action.
 - (d) Supervise the performance of all inspections, quality control tests, or any other tests required by law, rule, or regulation or by the Construction Documents, to ensure that such tests are performed in a satisfactory and timely fashion. Such tests shall include without limitation, semi-controlled or off-site inspections and controlled inspections and testing of soils, welding, cement, concrete, masonry, structural or reinforcing steel or any other material or equipment. If directed by the Director in writing as an additional service, the Construction Manager shall retain the services of a qualified laboratory to provide any required testing. Compensation for such laboratory services will be provided to the Construction Manager pursuant to the Allowance for Additional Services (with reference to Exhibit A hereof).
 - (e) Inspect the Project in conjunction with the Consultant and the Director's Representative on a periodic basis and prior to Substantial Completion, occupancy by CUCF, or Final Acceptance, as described in Articles 11.9.17 and 11.9.18 below. The Construction Manager shall furnish a detailed report to the Director and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
 - (f) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Director may determine, of any discrepancies or deficiencies in the finished Work.
 - (g) Inspect the Project and provide a report prior to the expiration of the guarantee period set forth in the Construction Documents, as described in Article 11.9.20 below.
 - (h) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Director may determine, of any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.
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11.9.4 Undertake the following responsibilities with respect to the Project Schedule:

- (a) Review proposed Project Schedule(s), and any updates thereto, submitted by the Subcontractor(s) and direct the Subcontractor(s) to revise the same as necessary to comply with the Project Schedule set forth in Exhibit B.
- (b) Take appropriate action to ensure compliance with the Project Schedule.
- (c) Review the adequacy of the personnel and equipment of the Subcontractor(s) and the availability of necessary materials and supplies to ensure compliance with the Project Schedule.
- (d) Notify the Director of any anticipated delays, such as with fabrication, availability of labor, delivery, or construction.
- (e) Take appropriate action to minimize delays to the Project caused by labor disputes during construction.
- (f) If performance of the Work by the Subcontractor(s) falls behind the Project Schedule, advise the Director of the same and describe the means and methods it plans to adopt to make up for lost time.

11.9.5 Review and evaluate the means and methods of construction proposed by the Subcontractor(s) and direct changes as necessary in the event the Construction Manager reasonably believes that such proposed means and methods of construction will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the terms of the Construction Documents.

11.9.6 Undertake the following responsibilities with respect to the safety of the site:

- (a) Perform all CM responsibilities set forth in the DDCM Safety Requirements (Exhibit H).
- (b) Review all Safety Programs and Site Safety Plan(s) developed by the Subcontractor(s) and direct revisions to the same as necessary prior to submission to DDCM.
- (c) Take appropriate action to enforce Subcontractor compliance with (1) Safety Program, (2) Site Safety Plan, (3) DDCM Safety Requirements, and (4) all applicable regulations that pertain to construction safety.
- (d) Promptly notify the Director and the Subcontractor(s) if the Construction Manager observes any hazardous conditions at the site or non-compliance by the Subcontractor(s) with its Safety Program, Site Safety Plan, DDCM Safety Requirements, any applicable safety regulations or subcontract requirements.
- (e) Take or cause to be taken precautions to minimize the risk of injury to persons and damage to property resulting from or arising out of the Work.
- (f) In the event of an emergency, provide such labor, materials, equipment, and supervision necessary to cure such emergency condition. The Construction Manager shall immediately notify the Director of any such emergency condition.

11.9.7 Undertake the following responsibilities with respect to Project record keeping:

- (a) Keep accurate and detailed written records of the progress of the Project during all stages of planning and construction.
- (b) Maintain a daily job diary or log book in which the Construction Manager describes all activities which occur on the Project on an hourly or other reasonable basis, including without limitation, all Work accomplished, the number of workers at the site, identified by trade, employed at the site by the Subcontractor(s), the number of hours worked, material deliveries and shortages, labor difficulties, weather conditions, visits by officials, decisions reached, specific problems encountered, general and specific observations, and all other pertinent data relative to the performance of the Work.
- (c) Maintain accurate, orderly, and detailed files and written records and documents regarding the Project, including without limitation, correspondence sent and received, minutes and/or reports of job conferences, progress reports, shop drawings and other submissions, subcontract documents, including all addenda, change orders, supplemental drawings, and all other Project-related documents.

The Construction Manager shall provide any records, documents, or information concerning the Project to the Director as directed.

- (d) With respect to work to be performed on a time-and-materials, unit cost, or similar basis, requiring the keeping of records and computation therefrom, maintain cost accounting records in accordance with CUCF's procedures.
- (e) Ensure that record "As Built" Drawings are produced and kept current by the Subcontractor(s) in accordance with the requirements of the Construction Documents.
- (f) All Project records, including without limitation those specified above, shall be available to the Director at all times immediately upon request and the Director shall have the right to remove such Project records and make copies thereof.

11.9.8 Monitor compliance by the Subcontractor(s) with all legal requirements applicable to the Work, including without limitation: (1) New York State Labor Law; (2) Americans with Disabilities Act (ADA); and (3) requirements for the participation of M/WBEs.

11.9.9 Undertake the following responsibilities with respect to Subcontractor payments:

- (a) Review all requisitions for payments submitted by the Subcontractor(s), including without limitation partial payments, payments for Extra Work, Substantial Completion and final payments.
- (b) Verify all estimates for payments of Work performed, computations, as well as field measurements and sketches necessary for payment purposes.
- (c) With respect to each requisition for payments submitted by the Subcontractor(s), determine the amount of liquidated damages, back charges or other deductions to be assessed.
- (d) Construction Manager's requisitions for payment for construction Work performed by Subcontractors, submitted in accordance with Article 42 hereof, shall be based upon and in accordance with Subcontractor requisitions for payment reviewed and approved by the Construction Manager.

11.9.10 Review and approve or disapprove applications for extensions of time submitted by the Subcontractor(s). The Construction Manager's request for a time extension for construction Work performed by Subcontractors, submitted for Director approval in accordance with Article 10 hereof, shall be based upon and in accordance with Subcontractor applications for extensions of time reviewed and approved by the Construction Manager.

11.9.11 Review, evaluate and respond to requests from Subcontractors for explanatory information and/or interpretation of the meaning and intent of the Construction Documents. The Construction Manager shall confer with the Consultant, ascertain the Consultant's interpretation, and prepare a response to the Subcontractor setting forth the Consultant's interpretation. In the event the Subcontractor disagrees with such interpretation, the Construction Manager shall prepare a detailed report to the Director setting forth the Consultant's interpretation, the Subcontractor's interpretation, and that by the Construction Manager.

11.9.12 Undertake the following responsibilities with respect to Subcontractor requests for change orders:

- (a) Review, evaluate, and make a decision with respect to the validity of all written Subcontractor requests for change orders. The Construction Manager's decision as to the validity of the proposed Subcontractor change order shall be in writing and shall provide a reasonably detailed explanation for the decision based upon the information presented by the Subcontractor and the requirements of the Construction Documents.
 - (b) If the Construction Manager decides that the Subcontractor's request for a change order is not valid, it shall provide such written decision to the Subcontractor, with a copy of the same to the Director.
 - (c) If the Construction Manager decides that the Subcontractor's request for a change order is valid, the Construction Manager shall prepare the proposed Subcontractor change order and submit the same to the Director for approval. Such proposed Subcontractor change order shall include or be Accompanied by the following: (1) the Construction Manager's written decision as to the validity of
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the change order, (2) the cost proposal submitted by the Subcontractor, (3) the Construction Manager's evaluation of such cost proposal, (4) the Construction Manager's own cost estimate of the quantities of labor, equipment and materials required for the performance of the proposed change order. The Construction Manager must be prepared to substantiate the information with respect to the change order to the Director, the Engineering Audit Officer, the Comptroller, and any other agency having jurisdiction in this area. The Director will make all final determinations regarding change orders, modifications, and additions to the Construction Documents.

- (d) If the Director approves the Construction Manager's request for a Subcontractor change order, the Construction Manager shall negotiate a price, i.e., a lump sum price or unit prices, for the performance of the proposed change order work and submit the same to the Director for his approval.

11.9.13 Conduct job meetings with the Subcontractor(s), Consultants, representatives of the Director, interested city agencies and any other entities or individuals involved with the Project to discuss procedures, performance, progress, problems, scheduling and related issues. The Construction Manager shall prepare minutes of such meetings in a format authorized by the Director and shall distribute such minutes to all attendees.

11.9.14 Undertake the following responsibilities with respect to Project reports:

- (a) Submit written progress reports to the Director on a monthly basis, unless otherwise directed. Such reports shall be based upon the most current information, and shall include, without limitation:
- (1) Executive Summary, project narrative, project team information, and project concerns;
 - (2) Progress Schedule, including information concerning the Work of the construction Subcontractor(s) and the percentage of completion of the Work;
 - (3) A two-month 'look ahead' with a fully loaded staffing schedule by trade
 - (4) RFI log (showing by date submissions and responses)
 - (5) Change Order Tracking Sheet, indicating the number and amount of change orders;
 - (6) Shop Drawing Log Schedule;
 - (7) Fabrication and Delivery Schedule;
 - (8) Safety report;
 - (9) Budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete, and
 - (10) Progress photographs, as set forth in Article 11.9.21.
- (b) Provide reports regarding the Work as may be directed by the Director, incorporating such information, interpretation, detail or back-up material as may be required by the Director.

11.9.15 Undertake the responsibilities set forth below with respect to disputes submitted by its Subcontractors. Disputes shall mean disputes of the kind delineated in the article of this Agreement covering the resolution of disputes.

- (a) Review, evaluate, and recommend in writing a determination of each dispute filed by its Subcontractors and suppliers. The Construction Manager's recommendation shall contain a clearly stated, reasoned explanation for the determination based upon the information and evidence presented by the Subcontractor, as well as the requirements of the subcontract and the Construction Documents.
- (b) The Construction Manager shall submit the dispute filed by its Subcontractor to CUCF for resolution in accordance with the article of this Agreement covering the resolution of disputes. The Construction Manager's submission shall be accompanied by the recommended determination described above.
- (c) The Construction Manager shall inform the respective Subcontractor and supplier of the progress, status, and outcome of its dispute, including dates, names of attendees, and locations of all meetings.

11.9.16 Determine the need for and undertake default proceedings against every Subcontractor and every

supplier failing to perform or failing to correct the default of a material obligation of the respective agreement. In the event of default by a Subcontractor or supplier, the Construction Manager shall promptly submit for Director approval a replacement Subcontractor to correct and perform the Work or a replacement supplier to provide the materials.

11.9.17 Undertake the following responsibilities with respect to Substantial Completion of the Project:

- (a) Inspect the Project in conjunction with the Consultant and the Director’s Representative at the time of Substantial Completion.
- (b) Furnish a detailed report to the Director and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
- (c) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Director may determine, of any discrepancies or deficiencies in the finished Work.
- (d) Finalize all necessary Punch Lists, including completion dates for all items, and expedite execution of the same by its Subcontractors.
- (e) Perform the above duties in the event CUCF is to take over, use, occupy, or operate any part or all of the Project.

11.9.18 Undertake the following responsibilities with respect to Final Acceptance of the Project:

- (a) Inspect the Project in conjunction with the Consultant and the Director’s Representative at the time of Final Acceptance.
- (b) Furnish a detailed report to the Director and the Consultant setting forth any discrepancies or deficiencies in the finished Work.
- (c) Take all appropriate action through its Subcontractors for the repair, replacement, restoration or rebuilding, as the Director may determine, of any discrepancies or deficiencies in the finished Work.
- (d) Assemble and deliver five (5) copies to the Director all record “As Built” Drawings in AutoCAD format on compact disc or comparable digital medium. The Construction Manager shall notify the Director of any issues, problems, or observations relative to such drawings.

11.9.19 Collect guarantees from the manufacturer, maintenance and operations manuals, keying schedules and other data required of the Subcontractor(s), and create as needed and maintain photographic records, material and equipment delivery records, visual aids, charts and graphs.

11.9.20 Undertake the following responsibilities with respect to maintenance and guarantee obligations:

- (a) Prior to the expiration of the guarantee period set forth in Article 25 hereof, inspect the Project and furnish a report to the Director describing in detail any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.
- (b) Take all appropriate action through its Subcontractors and suppliers for the repair, replacement, restoration or rebuilding, as the Director may determine, of any finished Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.

11.9.21 Take photographs to document the progress of the construction Work. Such photographs shall be taken on a bi-weekly basis until Substantial Completion of the Work. As indicated in Article 11.9.14, such photographs shall be included in each monthly progress report.

11.9.22 Provide, or cause to be provided, all temporary facilities and utilities as necessary for the performance of the Work. As directed in writing by the Director from time to time, manage and supervise the delivery and installation of fixtures, furniture, and equipment for the Project, as specified by CUCF.

11.9.23 In the event any claim is made or any action brought in any way relating to the design or construction of the Project, the Construction Manager shall diligently render to CUCF all assistance which CUCF may require. Such services shall be rendered by the Construction Manager without additional fee or other compensation, except for the costs and expense of personnel who were assigned to the Project as job-site or management staff, or comparable personnel if those who were assigned to the Project are no longer employed by the Construction Manager.

11.9.24 Perform such other Project related services as may from time to time be directed by the Director.

11.10 Services During Post Construction Phase: The Construction Manager shall provide construction management services during the Post Construction Phase, as directed by the Director. Such construction management services shall include without limitation the services set forth below.

11.10.1 Manage and supervise the delivery and installation of fixtures, furniture, and equipment for the Project, as specified by CUCF.

11.10.2 Manage and supervise training sessions provided by the construction Subcontractors for all equipment and/or systems installed.

11.10.3 Obtain and deliver to the Director permanent Certificates of Occupancy for the Project.

11.10.4 Submit to the Director originals of all final Project records, including without limitation, (1) all reports for the Project, including inspector's reports, as well as laboratory and plant testing reports; (2) all certificates, warranties and guarantees from manufacturers; (3) office and/or field diaries or log books; (4) all original records with respect to Subcontractor payments; (5) record "As Built" Drawings; (6) progress photographs of the construction, and (7) any other Project records required by the Director.

11.11 Additional Services: The Construction Manager may be directed to provide additional services. Additional services shall be such services determined by the Director to be necessary for the expeditious completion of the Project, and may include without limitation, the performance of general conditions work, and/or the purchase of miscellaneous items.

ARTICLE 12 - CHARACTER OF THE WORK

12.1 Unless otherwise expressly provided in this Agreement, the Work must be performed in accordance with the best, modern practice, with new materials and workmanship of the highest quality, to the satisfaction of the Director. All materials required for the Work shall be new, free from all defects, of the best available grade and quality, entirely satisfactory for the purpose intended, furnished in ample quantities to prevent delays, and in accordance with all requirements of this Agreement.

12.2 In work of this character, the Construction Manager acknowledges that it is impossible either to show all details in advance or to forecast all exigencies precisely. Therefore, the Construction Manager agrees to interpret broadly the Contract Documents to indicate the amount of work, the nature of the work, and general quality of the work, and to include all items for the proper execution and completion of the Work by Construction Manager, to the extent consistent with the Contract Documents and reasonably inferable therefrom as being necessary to complete the Work shown in the Drawings and Specifications.

12.3 Where no specific requirements are given, the Work shall conform with the latest applicable standards of nationally recognized associations, which sponsor the particular type of work involved, and materials shall conform, as the case may be, with the standards of the Institute of Electrical and Electronic Engineers, the Electronic Industries Association, American Society of Mechanical Engineers, American Society of Heating and Ventilating Engineers, American National Standards Institute, American Society for Testing and Materials, and the National Board of Fire Underwriters.

12.4 In the event of any doubt as to the meaning of any portion of the Specifications or Contract Drawings, or in the event a standard of workmanship or material is not specified, the Agreement shall be interpreted as requiring the Construction Manager to perform the work in the best and most workmanlike manner and to supply materials of the best class. The Construction Manager shall also perform the work with the highest regard to the safety of life and property and according to the lines, levels, and directions given by the Director, and to the satisfaction of the Director, as well as any provision set forth in the specifications.

ARTICLE 13 - MEANS AND METHODS OF CONSTRUCTION

13.1 Unless otherwise expressly provided in this Agreement, the means and methods of construction shall be such as the Construction Manager may choose; subject, however, to the Director's right to reject means and methods proposed by the Construction Manager which: (1) will constitute or create a hazard to the Work, or to persons or property; or (2) will not produce finished Work in accordance with the terms of the Agreement.

13.2 The Director's approval of the Construction Manager's means and methods of construction, or his failure to exercise his right to reject such means or methods, shall not relieve the Construction Manager of his obligation to accomplish the result intended by the Agreement; nor shall the exercise of such right to reject create a cause of action for damages.

ARTICLE 14 - INSPECTION

14.1 During the progress of the Work and up to the date of Final Acceptance of all required Work, the Construction Manager shall at all times afford the representatives of CUCF every reasonable, safe and proper facility for inspecting all Work done or being done at the Site and also the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.

14.2 The Construction Manager's obligation hereunder shall include the uncovering or taking down of finished Work and its restoration thereafter, provided, however that the order to uncover, take down and restore shall be in writing, and further provided that if Work thus exposed proves satisfactory, such uncovering or taking down and restoration shall be considered an item of Extra Work to be paid for in accordance with the provisions of Article 26 hereof, otherwise all shall be at the expense of the Construction Manager.

14.3 Inspection and approval by the Director's Representative of finished Work or of work being performed, or of materials and equipment at the place of manufacture or preparation, shall not relieve the Construction Manager of his obligation to perform the Work in strict accordance with the Agreement. Finished or unfinished Work found not to be in strict accordance with the Agreement shall be replaced as directed by the Director's Representative, even though such Work may have been previously approved.

14.4 Rejected Work and materials must be promptly taken down and removed from the Site, which must at all times be kept in a reasonably clean and neat condition.

ARTICLE 15 - PROTECTION OF WORK AND OF PERSONS AND PROPERTY

15.1 During the performance of the Work and up to the date of Final Acceptance, the Construction Manager shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism and in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace and/or repair such Work, as the Director's Representative shall determine to be preferable. The obligation to deliver finished Work in strict accordance with the Agreement prior to Final Acceptance shall be absolute and shall not be affected by the Director's Representative's approval of, or failure to prohibit, the means and methods of construction used by the Construction Manager.

15.2 During the performance of the Work and up to the date of Final Acceptance, the Construction Manager shall take all reasonable precautions to protect the persons and property of CUCF and of others from damage, loss or injury resulting from the Construction Manager's, and/or its Subcontractors' operations under this Agreement. The Construction Manager's obligation to protect shall include the duty to provide, place or replace and adequately maintain at or about the Site suitable and sufficient protection such as lights, barricades, and enclosures.

15.3 The Construction Manager shall make a full and complete report in writing to the Director's Representative within three (3) Days after the happening of any loss, damage or injury to Work, persons or property, or any accidents arising out of the operations of the Construction Manager and/or its Subcontractors under this Agreement. The Construction Manager shall notify in writing the Director (pursuant to Article 23), the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any such loss, damage, injury, or accident, and any claim or suit arising therefrom, immediately, but not later than 20 days after such event. The Construction Manager's notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of CUCF as Additional Insured as well as [the Construction Manager] as Named Insured." If the Construction Manager fails to give any of the foregoing notices to any appropriate insurance carrier in a timely manner, the damages to CUCF related to any such failure, such as an insurer's disclaimer of coverage citing late notice, shall be covered by the Construction Manager's duty to indemnify CUCF.

15.3.1 Notice to the Director pursuant to Article 15.3 shall specify the name of the Construction Manager, the number of this Agreement, the date of the occurrence, the location (street address and borough) of the occurrence, the identity of the persons or things injured, damaged or lost, and the name of the insurance carrier that issued the commercial general liability insurance policy pursuant to Article 23.1.1 of this Agreement. Such notice shall be sent to the Director, Procurement Services, CUCF, 555 West 57th Street, 11th Floor, New York, N.Y 10019.

15.4 The Construction Manager shall indemnify, defend with counsel acceptable to CUCF, and hold CUCF, CUNY, the City of New York, the State of New York and the Dormitory Authority of the State of New York, and each ones respective directors, officers, employees, partners, agents, subsidiaries and affiliates (collectively, the "Indemnitees") harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, allegedly arising out of or in any way related to the operations of the Construction Manager, its Subcontractors or its suppliers, or any combination of them, in the performance of this Agreement or from the failure of the Construction Manager, its Subcontractors or its suppliers, or any combination of them, to comply with any of the provisions of this Agreement or of the Law. Insofar as the facts and Law relating to any claim would preclude any of the Indemnitees from being completely indemnified by the Construction Manager, such of the Indemnitees shall be partially indemnified by the Construction Manager to the fullest extent provided by Law.

15.5 The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Construction Manager or CUCF.

ARTICLE 16 - REQUEST FOR INFORMATION OR APPROVAL

16.1 From time to time as the Work progresses and in the sequence indicated by the approved Project Schedule, the Construction Manager may submit to the Director a specific request in writing for each item of information or approval that it requires. These requests must state the latest date upon which the information or approval is actually required by the Construction Manager, and must be submitted sufficiently in advance thereof to allow the Director a reasonable time to act upon such submissions or any necessary re-submissions thereof.

16.2 The Construction Manager shall not have any right to an extension of time on account of delays due to his failure to submit his requests for the required information for the required approval in accordance with the above requirements.

ARTICLE 17 - NOTICE AND DOCUMENTATION OF DELAY DAMAGES

AND OTHER DAMAGES; PRODUCTION OF FINANCIAL RECORDS

17.1 After the commencement of any condition which is causing or may cause a delay in completion of the Work, including conditions for which the Construction Manager may be entitled to an extension of time, the following notifications and submittals are required:

17.1.1 Within seven (7) Days after the commencement of such condition, the Construction Manager must notify the Director's Representative in writing of the existence, nature, and effect of such condition upon the approved Project Schedule and the Work, and must state why and in what respects, if any, the condition is causing or may cause a delay.

17.1.2 If the Construction Manager shall claim to be sustaining damages for delay, by reason of any act or omission of CUCF or its agents, it shall submit to the Director within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Construction Manager may submit any of the above statements within such additional time as may be granted by the Director in writing upon written request therefore; failure of the Construction Manager to receive from the Director a written response to such a request within thirty (30) Days shall be deemed a denial of the request. The failure of the Construction Manager to comply fully with the foregoing provisions shall waive and extinguish each such claim, and no right to recover on such claims shall exist thereafter. Damages that the Construction Manager may claim in any action arising under or by reason of this Agreement shall not be different from or in excess of the statements made and documentation provided pursuant to this Article.

17.2 Failure of the Construction Manager to comply strictly with the requirements of Article 17.1.1, in the discretion of the Director, may be deemed sufficient cause to deny any extension of time on account of delay arising out of such condition. Failure of the Construction Manager to comply strictly with the requirements of Articles 17.1.1 and 17.1.2 shall be deemed a conclusive waiver and extinguishment by the Construction Manager of any and all claims for damages for delay arising from such condition, and no right to recover on such claims shall exist thereafter.

17.3 When appropriate and as directed by the Director's Representative, the Project Schedule shall be revised by the Construction Manager until finally approved by the Director's Representative. The revised Project Schedule must be strictly adhered to by the Construction Manager.

17.4 If the Construction Manager shall claim to be sustaining damages by reason of any act or omission of CUCF or its agents, it shall submit to the Director within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Construction Manager may submit any of the above statements within such additional time as may be granted by the Director in writing upon written request therefore; failure of the Construction Manager to receive from the Director a written response to such a request within thirty (30) Days shall be deemed a denial of the request. The failure of the Construction Manager to comply fully with the foregoing provisions shall waive and extinguish each such claim, and no right to recover on such claims shall exist thereafter. Damages that the Construction Manager may claim in any action arising under or by reason of this Agreement shall not be different from or in excess of the statements made and documentation provided pursuant to this Article.

17.5 In addition to any of the foregoing statements, the Construction Manager shall produce, upon notice from the Director, for examination at the Construction Manager's office by the Director's Representative, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, and all other documents showing all of its acts and transactions in connection with or relating to or arising by reason of this Agreement, and submit itself and persons in its employment, for examination under oath by any person designated by the Director to investigate claims made or disputes against CUCF under this Agreement. At such examinations, a duly authorized representative of the Construction Manager may be present.

17.6 In addition to the statements required under Article 30 and this Article, the Construction Manager and/or its Subcontractor shall, within thirty (30) days upon written notice from the Director, produce for examination at the Construction Manager's and/or Subcontractor's office, by a representative of the Director, all of its books of account, bid documents, financial statements, accountant work papers, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, and all other documents showing all of its acts and transactions in connection with or relating to or arising by reason of this Agreement. Further, the Construction Manager and/or its Subcontractor shall submit any person in its employment, for examination under oath by any person designated by the Director to investigate claims made or disputes against CUCF under this Agreement. At such examinations, a duly authorized representative of the Construction Manager may be present.

17.7 Unless the information and examination required under Article 17.6 is provided by the Construction Manager and/or its Subcontractor upon thirty (30) days notice from the Director, or upon the Director's written authorization to extend the time to comply, time being of the essence, CUCF shall be released from all claims arising under, relating to or by reason of this Agreement, except for sums certified by the Director to be due under the provisions of this Agreement. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against CUCF to recover any sum in excess of the sums certified by the Director or Comptroller to be due under or by reason of this Agreement, the Construction Manager must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this Article.

17.8 In addition, after the commencement of any action or dispute resolution procedure by the Construction Manager arising under or by reason of this Agreement, CUCF shall have the right to require the Construction Manager to produce for examination under oath, up until the trial of the action or dispute resolution meeting, the books and documents described in Article 17.6 and submit itself and all persons in its employ for examination under oath. If this Article is not complied with as required, then the Construction Manager hereby consents to the dismissal of the action or dispute resolution procedure.

ARTICLE 18 - DETERMINING ACTUAL DATE OF COMPLETION

18.1 Final inspection of the Work by the Director's Representative shall be made within ten (10) days after receipt of the Construction Manager's written request therefore. The Work will be deemed complete as of the date of such inspection if, upon such inspection, the Director's Representative finds that no further Work remains to be done. The Director will then issue a certificate of completion and acceptance of the Work.

18.2 Request for Re-inspection. However, if such inspection or re-inspection, in the opinion of the Director's Representative, reveals items of Work still to be performed, the Construction Manager shall promptly perform them and then request a re-inspection. If, upon any re-inspection, the Director's Representative determines that the Work is complete, the date of completion shall be deemed to be the actual date of such re-inspection, which shall be made not more than 10 days after the date of the request therefore.

ARTICLE 19 - EXTENSION OF TIME

19.1 Upon written application by the Construction Manager, the Director may extend in writing the Construction Manager's time to complete performance of the Agreement; any such extension also shall extend the Date of Completion day for day. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total number of days of delay attributable to such cause; in addition, the Director may require the Construction Manager to supplement any such application with additional information. The determination of the Director shall be final and binding as to the allowance of an extension and the number of days allowed.

ARTICLE 20 - OCCUPATION OR USE PRIOR TO COMPLETION

20.1 If before final completion of the Work specified hereunder, it shall be deemed necessary by the Director to take over, use, occupy or operate any part of the completed Work, the Director shall have the right so to do and the Construction Manager will not in any way interfere with or object to the use, occupation or operation of such Work by CUCF after receipt of notice in writing by the Director that such Work or part thereof will be used by CUCF on and after the date specified in such notice.

20.2 Should such action be taken by the Director, the Construction Manager's guarantee on that part of the Work placed into use shall begin on the date such use by CUCF shall begin, and the Construction Manager shall be entitled to a return of so much of the retained percentages as have been withheld under Article 42, as security for the faithful performance of the Work which the Director may take over, use, occupy or operate under this Article, except so much thereof as may be retained under Article 25 hereof.

20.3 Immediately prior to such occupancy or use, inspection of the part to be occupied or used will be made by the Director's Representative, and the Construction Manager will be furnished in writing with a statement of the Work, if any, still to be done on such part. If any part of the completed or partly completed Work is taken over for use, occupation, or operation under this Article, then the Director may issue a determination of Substantial Completion with respect to such Work.

ARTICLE 21 - CHANGED CONDITIONS

21.1 Should the Construction Manager encounter during the progress of the Work, subsurface conditions at the site materially differing from any shown on any documents furnished by the Director or such subsurface conditions as could not reasonably have been anticipated by the Construction Manager and were not anticipated by CUCF, which conditions will materially affect the cost of the Work to be done under the Agreement, the attention of the Director must be called immediately to such conditions before they are disturbed. The Director shall thereupon promptly investigate the conditions. If the Director finds that they do so materially differ, or that they could not reasonably have been anticipated by the Construction Manager and were not anticipated by CUCF, the Agreement may be modified with the Director's written approval. Any increase in cost resulting therefrom shall be in accordance with Article 26.

ARTICLE 22 - ASSIGNMENTS

22.1 The Construction Manager shall not assign, transfer, convey or otherwise dispose of this Agreement, or of its rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the moneys due or to become due under this Agreement, unless the prior written consent of the Director shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

22.2 Such assignment, transfer, or conveyance shall not be valid until the Director endorses thereon or attaches thereto consent to it.

22.3 Failure of the Construction Manager to obtain the required prior written consent of the Director to such an assignment, transfer or conveyance, shall be cause for termination of the Agreement for cause, at the option of the Director; and, if so terminated, CUCF shall thereupon be relieved and discharged from any further liability and obligation to the Construction Manager, its assignees or transferees, and all monies that may become due under the Agreement shall be forfeited to CUCF, except so much thereof as may be necessary to pay the laborers and Construction Manager's employees for work performed prior to the date of any such termination.

22.4 The provisions of this Article shall not be construed to hinder, prevent, or affect an assignment by the Construction Manager for the benefit of creditors made pursuant to the statutes of the State of New York.

22.5 The Construction Manager hereby assigns, sells and transfers to CUCF all right, title and interest in and to any claims and causes of action arising under the antitrust laws of New York State or of the United States relating to the particular goods or services purchased or procured by CUCF under this Agreement.

22.6 This Agreement may be assigned by CUCF to anyone having authority to accept such assignment.

**ARTICLE 23 – LIABILITY OF THE CONSTRUCTION MANAGER:
INDEMNIFICATION AND INSURANCE**

23.1 In addition to any liability or obligation of the Construction Manager to CUCF referred to by any other provision of this Agreement or by statute or otherwise and relating to indemnification, Construction Manager shall defend, with counsel acceptable to CUCF, indemnify and save harmless CUCF, CUNY, the City of New York, the State of New York and the Dormitory Authority of the State of New York, and each ones respective directors, officers, employees, partners, representatives, agents, subsidiaries and affiliates (each, “Indemnitee,” and collectively, the “Indemnitees”) to the fullest extent permitted by law, from any and all manner of action and actions, accounts reckoning, bonds, bills, fines, liens, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, costs, and demands of every kind, in law or equity, including attorney's fees, to which any or all of them may be subjected or put by reason of any act or omission of Construction Manager, its employees, Subcontractors or agents in relation to this Agreement. The Construction Manager shall be solely responsible for any and all injuries to persons, including, without limitation, death, and all damage to property resulting from any act or any negligence or carelessness on the part of Construction Manager, its employees, Subcontractors or agents in relation to this Agreement, and the whole or so much of the monies due or to become due to Construction Manager under this Agreement, or other security acceptable to CUCF, as shall or may be considered necessary by the respective Indemnitee or its Comptroller, may be retained by CUCF until all such suits or claims shall have been settled or otherwise disposed of, and evidence to that effect furnished to the satisfaction of the Indemnitee or its Comptroller. In addition, the Construction Manager shall defend, with counsel acceptable to CUCF, indemnify and hold harmless each and every Indemnitee to the fullest extent permitted by law, from all claims against any of them for the alleged infringement of any copyright, patent or any other proprietary right arising out of the use of any Product, plan, design, drawing, specification, Property, or Materials furnished by Construction Manager in the performance of this Agreement. The provisions of this Article shall not terminate with the term of this Agreement, shall not be suspended, and shall survive any termination or expiration of it.

23.2 Types of Insurance. At all times this Agreement is in force, the Construction Manager shall provide and maintain the insurance that is specified in this Article on a primary basis and an occurrence bases in the amounts set forth at Exhibit I hereof, which is incorporated herein, and, except as otherwise provided, until the date of final payment to the Construction Manager under this Agreement or upon termination of this Agreement, whichever shall first occur; except for Worker’s Compensation Insurance, all insurance required hereunder shall name the City University Construction Fund, and each of the following, as an additional insured thereunder: (i) The City University of New York, (ii) the City of New York, (iii) the State of New York, and (iv) the Dormitory Authority of the State of New York, with all of these entities referred to as “Additional Insureds” in this Agreement:

23.2.1. Commercial General Liability Insurance on a 2001 ISO occurrence form, or its substantial equivalent without material modification that is acceptable to CUCF, including without limitation, three (3) years’ completed operations, contractual liability, independent contractors, and broad form property damage. Without limiting the generality of the foregoing, such insurance shall protect the Construction Manager and its servants, agents, suppliers and Subcontractors, from claims for bodily injury, including death., as well as from claims for property damage, which may arise from operations under this Agreement, whether such operations be by Construction Manager or by any of its servants, agents, suppliers, and Subcontractors or anyone directly or indirectly employed by any of them. Such Coverage shall be a total of at least TBD of Commercial General Liability Insurance and shall include Environmental Impairment Liability (EIL) coverage as a part of the Commercial General Liability Insurance contract or the EIL coverage shall be separately obtained.

23.2.2. Workers' Compensation Insurance (including occupational disease), which includes statutory Workers' Compensation and Disability Benefits, and Employers' Liability coverage, with limits in accordance with the law, but in no event less than the amounts specified at Appendix I hereof for Bodily Injury by Accident - Each Accident, by Bodily Injury by Disease - Policy Limit, and by Bodily Injury by Disease - Each Employee.

23.2.3. Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks and trailers. Such insurance shall provide coverage of not less than that of the standard Comprehensive Automobile Liability policy, but in no event less than the limit specified at Appendix I hereof each in a Combined Single Limit for each occurrence for Bodily Injury and Property Damage.

23.2.4. Property insurance written on a builder's risk "all-risk" or equivalent policy form in an amount not less than the full cost of replacement including changes to the Agreement, professional fees, costs related to delay or interruption due to a covered cause of loss to the Work, cost of materials supplied or installed by others, the contents of the Project during construction and when completed and occupied, existing buildings, facilities and contents, comprising total value for the entire Project at the site on a replacement cost basis without deductibles. In addition, such property insurance shall comply with the following requirements:

23.2.4.1 CUCF and the Construction Manager shall be named as loss payees in order of precedence, as their interest may appear. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than CUCF has an insurable interest in the property to be covered, whichever is earlier. The Construction Manager and its Subcontractors of all tiers shall be named as additional insureds under such policies. With respect to any provision of this policy requiring protective safeguards as a condition of coverage, the Construction Manager shall notify CUCF in writing that such a provision pertains to this insurance, and shall describe for CUCF the measures it will establish and maintain over the term of the Agreement to satisfy such condition.

23.2.4.2. Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, terrorism coverage, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, glass breakage, mold, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, boiler and machinery, temporary buildings and debris removal including, without limitation, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for professional services, such as those of architects and engineers, and expenses required as a result of such insured loss as well as all increased costs of the Work, including general conditions, resulting from any related delay or disruption of the Work. The property insurance shall not include a water-infiltration exclusion.

23.2.4.3. If the property insurance requires deductibles, or contains coverage gaps, sublimits, or exclusions, none shall exceed fifty thousand dollars (\$50,000.00) individually, and, at its sole expense, Construction Manager shall pay costs not covered because of such deductibles or coverage gaps, sublimits or exclusions.

23.2.4.4. This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. In the event that the insurance policy is issued by a mutual insurance company, the following language shall be included: "CUCF is not liable for any premium or assessment under this policy of insurance. The First Named Insured is solely liable therefore."

23.2.4.5. In the event the loss occurs at an occupied facility, by endorsement the policy shall permit occupancy without the consent of the Insurance Company, otherwise, partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. CUCF and the Construction Manager shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

23.2.4.6. Its coverage may be limited to only external risks or causes of loss to the extent the commercial general liability policy covers all other risks or causes of loss and property damage not covered by this policy, otherwise it shall not be limited to only external risks or causes of loss.

23.2.5. Umbrella liability and excess liability insurance on the following form basis providing limits at the minimum specified at Exhibit I hereof; this policy or combination of policies will be excess over the limits or umbrella as specified at Exhibit I hereof for Commercial General Liability, Automobile Liability and Employers Liability policies; coverage terms under this policy(s) shall be at least as broad as the underlying General Liability, Automobile Liability and Employers Liability insurance policies.

23.2.6. By specific endorsement to its primary liability policy, the Construction Manager shall cause the coverage afforded to the Additional Insureds thereunder to be primary to and not concurrent with other valid and collectible insurance available to the Additional Insureds. Additional Insured status shall be specifically provided by Additional Insured Form CG 2010 (1185), or a combination of either CG2010 (1093) and CG 2037 (1001) or CG 2033 (1001) and CG2037 (1001), or equivalent manuscript wording, and shall apply to a primary and non-contributing basis before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds, and shall remain in effect for the duration of the Project, including the completed operations period.

23.3. All policies shall be endorsed to waive all rights of subrogation in favor of CUCF.

23.4 By specific endorsement to its Commercial General Liability umbrella/excess liability policy(ies), Construction Manager shall cause the coverage afforded to the Additional Insureds hereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds and not concurrent with or excess to any other valid and collectible insurance purchased and maintained by the Additional Insureds, whether provided on a primary or excess basis.

23.5. By specific endorsement to its Commercial General Liability primary and umbrella/excess liability policies, Construction Manager shall provide that defense costs are not to be considered as damages so as to erode the policy limits required under this Agreement.

23.6 For the term of this Agreement and for each policy required by this Agreement, the Construction Manager shall provide and maintain each such policy with one or more carriers licensed and authorized to do business in the State of New York and approved by the Superintendent of Insurance of the State of New York; each such carrier shall maintain a rating of at least "A-VII" by A. M. Best Company, Inc. or a rating of at least "AA" by Standard & Poor's Financial Services LLC; in any event the Construction Manager demonstrates to the satisfaction of the Director that it cannot obtain any such policy from a carrier who possesses the qualifications delineated in this paragraph, then the Director may permit in writing the Construction Manager to provide and maintain each such policy issued by a carrier who may lawfully issue it. All required insurance policies shall be in a form acceptable to CUCF and shall contain no exclusion and no endorsement that is unacceptable to CUCF. All required policies shall be endorsed to provide as follows: "This policy shall not be canceled, terminated, modified, or changed by the Insurance Company unless at least thirty (30) Days prior written notice is sent to the Named Insureds by Certified Mail and also sent by Registered Mail to the Director."

23.7. Each policy required hereunder shall provide that it shall not be canceled, terminated, changed, modified or not renewed by any insurance carrier unless thirty (30) days prior written notice is sent by registered mail, return receipt requested, to both CUCF and the Construction Manager, nor shall any such policy be canceled, terminated, changed, modified or not renewed by Construction Manager without the prior written consent of CUCF. In the event that any coverage of any policy of insurance required hereunder is deleted, diminished, or lessened, Construction Manager shall immediately procure equal or better coverage in replacement therefore.

23.8. Upon its execution of this Agreement and upon the renewal of each policy to which this Agreement refers, Construction Manager shall furnish CUCF with certificates of insurance and additional insured endorsements from its

insurance carriers and acceptable to CUCF showing Construction Manager has obtained all insurance required by this Agreement.

23.9. Any failure by Construction Manager to procure all or any portion of the insurance, or for such insurance to contain any clause or endorsement, specified in this Article shall be considered a material breach of this Agreement. In addition to all other remedies, causes of action, etc., available to CUCF under this Agreement and the law, at its option CUCF may withhold payments due to Construction Manager under this Agreement until the Construction Manager cures such breach.

23.10. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Construction Manager or CUCF or any of the Additional Insureds beyond such as may legally exist irrespective of this Article or this Agreement.

23.11. Proof of Insurance

23.11.1 Within ten (10) days of advice of award, the Construction Manager shall file with the Director one or more Certificates of Insurance for each policy required under this Agreement, with each Certificate being in the form set forth at Exhibit I hereof..

23.11.2 If the Construction Manager is required to provide builders' risk insurance, within a reasonable time after filing the Certificate of Insurance for that policy, the Construction Manager shall furnish an original and a copy of the Builders' Risk policy, if required by the Director. The policy shall be stamped PAID, or receipted bills demonstrating payment of premiums shall be submitted with the policy.

23.11.3 Certificates confirming renewals of insurance shall be submitted no fewer than thirty (30) days prior to the expiration date of coverage until all operations under this Agreement are deemed completed.

23.11.4 Pursuant to applicable statutory provisions, including, without limitation, Sections 57 and 220, of the New York State Workers' Compensation Law, the Construction Manager must submit to CUCF proof of workers' compensation and disability benefits coverage.

23.12 Operations at the Site

23.12.1 The Construction Manager shall not commence any operations at the site or adjacent thereto unless and until Certificates of Insurance related to all required insurance has been submitted to and accepted by the Director.

23.12.2 The Construction Manager shall be responsible for providing continuous insurance coverage as required by this Agreement, and shall be authorized to work at the site only during the effective period of all required coverage.

23.12.3 In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Construction Manager shall immediately stop all work at the site, and shall not recommence work at the site until authorized in writing to do so by the Director. Upon quitting the site, the Construction Manager shall leave all plant, materials, equipment, tools, and supplies on the site. The term shall continue to run during such periods, and no extension of time will be granted to recover time lost to any such lapse, revocation, suspension, or termination. Furthermore, the Director may declare the Construction Manager in default for failure to maintain required insurance.

23.12.4 The Construction Manager shall promptly notify the Director of any accident causing bodily injury or property damage arising in the course of operations under the Agreement.

ARTICLE 24 - MONEY RETAINED AGAINST CLAIMS

24.1 If any claim shall be made by any person, firm or corporation against CUCF or against the Construction Manager and CUCF: (1) for an alleged loss, damage or injury of the kind referred to in Article 15 hereof which, in the opinion of the Director, may not be covered by the general liability insurance policy, or, which, together with previously filed claims, is in excess of the amount payable under such policies; or (2) for an infringement of copyrights or patents or use of patented articles, tools, etc.; or (3) for damage claimed to have been caused directly or indirectly by the failure of the Construction Manager to perform the Work in strict accordance with this Agreement: the amount of such claim, or so much thereof as he may deem necessary, may be withheld as security against such claims, from any money due hereunder, until such time as the commencement of an action thereon would be barred by law or until final adjudication of such action by a court of competent jurisdiction. Subject to the prior approval and at the sole option of the Director, the Construction Manager may substitute other satisfactory security in lieu of the moneys so withheld.

24.2 If no action is commenced upon any such claim within the time limited thereof by law, the Director, upon written demand by the Construction Manager, shall return the amount so withheld without interest.

24.3 If an action on such claim is timely commenced and the liability of CUCF, or the Construction Manager, or both, shall have been established therein by a final judgment of a court of competent jurisdiction, or if such claim shall have been admitted by the Construction Manager to be valid, CUCF shall pay such judgment or admitted claim out of the moneys retained under the provisions of this Article, and return the balance, if any, without interest, to the Construction Manager.

24.4 Liens: If any time before or within thirty (30) days after the whole Work herein agreed to be performed is completed and accepted by CUCF, any persons claiming to have performed any labor or furnished any material toward the performance or completion of this Agreement shall file with CUCF any notice as is described in the Lien Law, or any act of the Legislature of the State of New York, CUCF shall retain, from the moneys due or to become due under this Agreement, so much of such moneys as shall be sufficient for CUCF to pay the amount claimed in said notice, together with its reasonable costs of any action or actions, including, without limitation, its legal fees and related costs, brought or that may be brought to enforce such Lien. The moneys so retained shall be held by CUCF until the Lien thereon created by the said act and the filing of the said notice shall be discharged pursuant to law.

ARTICLE 25 - MAINTENANCE AND GUARANTY

25.1 The Construction Manager must repair, replace, restore or rebuild, promptly as the Director may determine, any finished Work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one-year period subsequent to the date of Substantial Completion of the Work required hereunder, except where other periods of maintenance and guarantee are specified.

25.2 As security for the faithful performance of its obligations hereunder, the Construction Manager, upon filing his requisition for the Substantial Completion payment hereunder, shall deposit with the Director a sum equal to 1% of the value of the construction Work certified for payment in cash or certified check upon a state bank or a check of such bank signed by a duly authorized officer thereof and drawn to the order of the CUCF Comptroller.

25.3 In lieu of the above, the Construction Manager may make such security payment to CUCF by authorizing the Director in writing to deduct the amount from the Substantial Completion payment hereunder, which shall be deemed the deposit required above.

25.4 If the Construction Manager has faithfully performed all of its obligations hereunder, the Director shall so certify it within five (5) days after the expiration of one (1) year from the date of Substantial Completion of the Work required hereunder. The sum shall be repaid to the Construction Manager without interest within thirty (30) days after certification by the Director that the Construction Manager has faithfully performed all his obligations hereunder.

25.5 Notice by the Director to the Construction Manager to repair, replace, rebuild, or restore such defective or

damaged Work shall be timely if given not later not than ten (10) days subsequent to the expiration of the one-year period or other periods provided herein.

25.6 If the Construction Manager shall fail to repair, rebuild, or restore such defective or damaged Work promptly after receiving such notice, the Director shall have the right to have the Work done by others and to deduct the cost thereof to CUCF from the amount so deposited hereunder. The balance, if any, shall be returned to the Construction Manager without interest. If the amount so deposited be insufficient to cover the cost of such work, the Construction Manager shall be liable to pay such deficiency on demand by the Director.

25.7 The Director's Representative certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Construction Manager shall be binding and conclusive as to the amount thereof upon the Construction Manager.

25.8 The Construction Manager shall obtain all manufacturer's warranties and guaranties of all equipment and materials required by this Agreement in the name of CUCF and shall deliver same to CUCF.

ARTICLE 26 - AGREEMENT CHANGES

26.1 Changes may be made to this Agreement only in writing and only as duly authorized by the Director, the Contracting Officer or a designee of either. In any event the Construction Manager deviates from the requirements of this Agreement does so at its own risk without a duly approved change order document, or written contract modification or amendment or directive to perform Extra Work that covers such deviation. All such changes, modifications, directives, and amendments will become a part of the original Agreement upon the signature of CUCF, and must be performed by the Construction Manager.

26.2 Agreement changes will be made only for Work necessary to complete the Work covered by the original scope of the Agreement, and for non-material changes to the Agreement. No material change will be made to the scope of the Project. Agreement changes may include any revision deemed necessary by the Director or Contracting Officer. In any event that the Construction Manager believes it is entitled to a price adjustment for Extra Work performed pursuant to a unilateral, written change order or for any additional costs it believes it has incurred as a result of any changes made by CUCF to this Agreement, it must comply with the notice provisions set forth in this Agreement. If any part of the Contract Work is necessarily delayed by a change order, the Construction Manager may be entitled to an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways: (1) by agreement of a fixed price; (2) by unit prices specified in the contract; (3) by time and material record; and/or (4) in any other manner approved by the Contracting Officer.

26.3 Changes are subject to verification. All change orders are subject to audit. In any event an audit reveals that the costs for or scope of the change order work or of the Extra Work was stated inaccurately, CUCF shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price of the change order or the contract price. This remedy is not exclusive, and is in addition to all other rights and remedies of CUCF.

ARTICLE 27 - AUDIT AND EXAMINATION

27.1 This Agreement, the Construction Manager's performance, and all payments hereunder shall be subject to audit and examination during normal business hours from time to time by the DDCM and by the Comptroller of CUCF in accordance with Law at a location within the City of New York selected by the Director.

ARTICLE 28 - METHODS OF PAYMENT FOR EXTRA WORK

28.1 Extra Work: The price to be paid for Extra Work ordered pursuant to Article 26, and performed hereunder, shall be as set forth herein. For Extra Work where payment is by agreement on a fixed price in accordance to Article 26.2, the price to be paid for such Extra Work shall be the fair and reasonable cost of the items set forth below. For

Extra Work where payment is on a time and material basis in accordance with Article 26.2, the price to be paid for such Extra Work shall be the actual and reasonable cost of the items set forth below.

- 28.1.1 Necessary materials (including transportation to the Site);
 - 28.1.2 Necessary direct labor, the cost of which shall be comprised of the items set forth below:
 - (a) prevailing wages and supplemental benefits, as defined in Labor Law Section 220;
 - (b) Payroll Taxes, defined as State Unemployment Insurance (“SUI”), Federal Unemployment Insurance (“FUI”) and payments pursuant to the Federal Insurance Contributions Act (“FICA”); and
 - (c) workers’ compensation insurance, as set forth in Article 10.2.2(e) of this Agreement. The cost of workers’ compensation insurance shall be based upon the average rate for such insurance for the applicable class(es) of labor, in accordance with the most recent schedule promulgated by the New York State Workers’ Compensation Board.
 - 28.1.3 Sales and personal property taxes, if any, required to be paid on materials not incorporated into such Extra Work;
 - 28.1.4 Maintenance, operation and rental of, or reasonable rental value of Subcontractor-owned, necessary plant and equipment other than small tools. Subcontractor-owned equipment is defined to include equipment rental companies affiliated with or controlled by the Subcontractor, as determined by the Director. Payment rates for the use of Subcontractor-owned plant and equipment shall be in accordance with the provisions of Joint Directive No. 1 issued by the City of New York Mayor’s Office of Construction and the Comptroller. The applicable directive shall be that in effect at the time of the bid opening for the subcontract;
 - 28.1.5 Necessary installation and dismantling of such plant and equipment (including transportation to and from the Site), if any;
 - 28.1.6 Reasonable rental costs of non-subcontractor-owned necessary plant and equipment other than small tools. In no event shall the amount paid to the Subcontractor for such rental exceed the lower of the actual value of such equipment or the book value of such equipment;
 - 28.1.7 Any insurance coverage expressly required by CUCF for the performance of the Extra Work which is different than the types of insurance required by Article 10.2.2(e), other than workers’ compensation insurance;
 - 28.1.8 Twenty (20%) percent of the total of items in Articles 28.1.1 through 28.1.5 as compensation for overhead and profit, except that no percentage for overhead and profit will be allowed on (a) Payroll Taxes, (b) workers’ compensation insurance, (c) the premium portion of overtime pay, and/or (d) sales and personal property taxes. Overhead shall include without limitation, all costs and expenses in connection with administration, management superintendence, small tools, insurance required by Article 10.2.2(e), other than worker’s compensation insurance, and performance and payment bonds;
 - 28.1.9 Five (5%) percent of the total of items in Article 28.1.6 and 28.1.7 as compensation for overhead and profit.
 - 28.2 Where the Extra Work is performed in whole or in part by other than a Subcontractor, the Subcontractor shall be paid, subject to audit by CUCF, the cost of such Work computed in accordance with Article 28.1 above, plus an additional allowance of five (5%) percent as the Subcontractor's overhead and profit.
 - 28.3 Where a change is ordered that involves both Extra Work and omitted or reduced subcontract Work, the
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subcontract price shall be adjusted, subject to audit by CUCF, in an amount based on the difference between the cost of such Extra Work and of the omitted or reduced Work. The cost of such Extra Work and of such omitted or reduced Work shall be computed based upon applicable subcontract unit prices. Where there are no applicable subcontract unit prices, the cost of such Extra Work and of such omitted or reduced subcontract Work shall be computed in accordance with the Articles 28.1.1 through 28.1.7. If the cost of such Extra Work exceeds the costs of such omitted or reduced subcontract Work, the subcontract price shall be increased by the difference, plus percentages for overhead and profit as provided in Articles 28.1.8 and 28.1.9. If the cost of the omitted or reduced subcontract Work exceeds the cost of the Extra Work, then the subcontract price shall be reduced by the difference.

28.5 Where the Construction Manager and the Contracting Officer agree upon another method of payment for Extra Work in accordance with Article 26.2, or for Extra Work ordered in connection with omitted work, such method, subject to audit, may, at the sole option of the Director, be substituted for the cost-plus-a-percentage method; provided in Article 28.1; provided, however, that if the Extra Work is performed by a sub-subcontractor engaged by a Subcontractor, the Subcontractor shall not be entitled to receive more than an additional allowance of five (5%) percent for overhead and profit over the cost of such sub-subcontractor's Work as computed in accordance with Article 28.1.

28.6 Unless the parties agree on a lump-sum payment for Extra Work, requests for payment for Extra Work performed by construction Subcontractors shall be accompanied by signed time sheets, documenting by date the actual hours worked by specific personnel for whom payment is requested, and any other data as may be requested by the Director. Under an agreement for a lump-sum payment for Extra Work, the Construction Manager shall obtain from the performing Subcontractor(s) all documentation required for a requisition for payment for Work completed.

28.7 The Construction Manager shall not be entitled to any mark-up whatsoever on payments for Extra Work ordered pursuant to Article 26 hereof performed by Subcontractors.

28.8 Overrun of Unit Price Item: The provisions set forth below shall apply to overruns of unit price items which the Construction Manager, through its Subcontractor, is directed to provide. An overrun is any quantity of a unit price item which the Construction Manager, through its Subcontractor, is directed to provide which is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule.

28.8.1 For any unit price item, the Construction Manager's Subcontractor will be paid at the unit price bid for any quantity up to one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule. If during the progress of the Work, the actual quantity of any unit price item required to complete the Work approaches the estimated quantity for that item, and due to errors, site conditions, changes in design, or any other reason, it appears that the actual quantity of any unit price item necessary to complete the Work will exceed the estimated quantity for that item by twenty-five (25%) percent, the Construction Manager shall immediately notify the Director's Representative of such anticipated overrun. The Construction Manager's Subcontractor shall not be compensated for any quantity of a unit price item provided which is in excess of one hundred twenty-five (125%) percent of the estimate quantity for that item set forth in the bid schedule without written authorization from the Director's Representative.

28.8.2 If the actual quantity of any unit price item necessary to complete the Work will exceed one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule, CUCF reserves the right and the Construction Manager, through its Subcontractor, agrees to negotiate a new unit price for such item. In no event shall such negotiated new price exceed the unit bid price. If CUCF and Construction Manager, through its Subcontractor, cannot agree on a new unit price, then CUCF shall order the Construction Manager and the Construction Manager, through its Subcontractor agrees to provide additional quantities of the item on a time and material basis for the actual and reasonable cost as determined under Article 28.1, but in no event at a unit price exceeding the unit price bid.

ARTICLE 29 - RESOLUTION OF DISPUTES

29.1 Generally

29.1.1. In relation to only this Agreement, all claims, controversies or disputes the Construction Manager may have against CUCF, including, without limitation, all claims, controversies or disputes a Subcontractor or a supplier may have in relation to this Agreement, (each a “Dispute”) to the extent permitted by law, shall be resolved exclusively by the procedure set forth in this Article. Without limitation, this procedure covers Disputes concerning: (1) the scope of the Work related to this Agreement, (2) any direction given by CUCF or any governmental agency, (3) the performance by CUCF of its obligations under this Agreement, (4) the interpretation of this Agreement or of the Contract Documents, (5) if an amount, and what amount, if any, is to be paid for Work or Extra Work or disputed Work performed in connection with this Agreement, (6) every payment to and by the Construction Manager, (7) the conformity of the Work with this Agreement or the acceptability and quality of any portion or all of the Work, and (8) any combination of these. Independent of any other provision, time is of the essence to this procedure. The Construction Manager and its Subcontractors and suppliers grant CUCF the right to resolve any claim, controversy, or dispute between or amongst them arising under or related to the Agreement, their subcontract, or the Project, including, without limitation, the right of CUCF to resolve any of these by direct payment on behalf of the Construction Manager to a Subcontractor or supplier with a corresponding charge against the Construction Manager’s balance under this Agreement.

29.1.2. The terms of this Agreement shall remain in full force and effect during the period this dispute resolution procedure is being followed with respect to any Dispute. The Construction Manager agrees to continue to perform its obligations hereunder during this period in accordance with this Agreement and as directed by CUCF, including, without limitation, any and all matters covered by the Dispute. Failure of the Construction Manager to continue without delay to discharge its obligations hereunder, including, without limitation, to perform any Work, disputed Work and Extra Work as directed, shall constitute a material breach of this Agreement and a waiver by the Construction Manager of each Dispute then under review in this procedure.

29.1.3. During the investigations integral to this procedure, each party shall provide to the other party copies of all information that each provides in response to any requests for information made by the Executive Director of the Department of Design, Construction and Management of CUNY (the “Executive Director”) and by the Vice Chancellor for Facilities Planning, Construction and Management of CUNY (the “Vice Chancellor”).

29.1.4. In any event the Construction Manager, either on its own behalf or on behalf of a subcontractor or supplier, fails (a) to submit timely any Notice of Dispute, Dispute Report, Notice of Appeal, or any other information or document required or requested to be provided or (b) to attend without good cause any meeting it is required or requested to attend, pursuant to this procedure, its Dispute shall be deemed waived, and CUCF shall be deemed released of all liability for it.

29.1.5. As either may deem appropriate from time to time, the Executive Director and Vice Chancellor each may obtain technical and other expertise for assistance in evaluating the information related to a Dispute. Each may use mediation and select as a neutral mediator a CUNY employee, who is from a department or office not under the supervision of the Executive Director or Vice Chancellor, or hire a neutral mediator, who is not employed by CUCF or CUNY; the Construction Manager agrees to pay CUCF one-half of any fee for the services of a mediator not employed by CUCF or CUNY. All mediation sessions shall be confidential and the parties agree that no mediation session may be the sole source of any information used in any other forum, such as litigation of the Dispute.

29.2 Commencement

Within fifteen (15) business days of any act or omission that gives rise to a Dispute, the Construction Manager, both on its own behalf and on behalf of its subcontractors and suppliers, must submit to the Executive Director written notice of its Dispute. In each such notice, the Construction Manager must identify (a) the date on which the Dispute

arose, and (b) a brief description of it (with the elements specified in (a) and (b) hereof comprising a “Notice of Dispute”). The Construction Manager may add other information it deems relevant. This notice requirement shall not replace any other notice requirement set forth in this Agreement. For cause, the Executive Director may extend in writing by no more than ten (10) business days the period within which the Construction Manager may file the Notice of Dispute.

29.3 Filing the Dispute

Within twenty (20) business days after submission of a Notice of Dispute, the Construction Manager must submit to the Executive Director an original and one copy (a) of a full written description of its Dispute, (b) of the resolution it requests CUCF to adopt, (c) of all documentation related to the Dispute, such as written orders from CUCF, and, as to any resolution that includes a payment of any sum, all supporting documentation that specifies the sum at issue and all computations required to arrive at the sum, and (d) of any other findings or decisions the Construction Manager asks CUCF to reach (with all of these elements comprising a “Dispute Report”). The Construction Manager may add other information it deems relevant. For cause, the Executive Director and the Vice Chancellor may extend in writing by no more than ten (10) business days the period within which the Construction Manager may file the Dispute Report.

29.4 Investigation, Meetings, and Notice of Appeal

29.4.1. After receipt of the Dispute Report, the Executive Director shall investigate it, may require additional information from CUCF staff and from the Construction Manager, and may convene meetings with the Construction Manager, including the relevant sub-professional, and CUCF staff to resolve the Dispute. The Executive Director may resolve the Dispute by negotiating terms acceptable to both the Construction Manager and CUCF (a “Negotiated Resolution”). The Executive Director shall put in writing any Negotiated Resolution to be executed by the Construction Manager and CUCF. Alternatively, after completing this investigation of the Dispute, the Executive Director may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written decision (a “Unilateral Resolution”) that CUCF shall send to the Construction Manager by certified mail, return receipt requested, and to the CUCF staff for implementation. Any Unilateral Resolution rendered by the Executive Director, and not timely appealed by the Construction Manager pursuant to the procedure described below, shall be final and binding upon the parties upon expiration of the tenth day after the Construction Manager receives any such Unilateral Resolution.

29.4.2. The Construction Manager, on its own behalf and on behalf of a sub-professional, may request an appeal (a) if the Executive Director is unable to reach a Negotiated Resolution or (b) the Construction Manager receives a Unilateral Resolution with which the Construction Manager disagrees. The Construction Manager must commence any such appeal by submitting a written notice to the Vice Chancellor requesting the Vice Chancellor to resolve the Dispute or to revise the Unilateral Resolution, as the case may be (“Notice of Appeal”). The Construction Manager must file the Notice of Appeal within thirty (30) consecutive calendar days after the Executive Director receives the Dispute Report in the case of a failure to reach a Negotiated Resolution or, within ten (10) consecutive calendar days after the Construction Manager receives any Unilateral Resolution with which the Construction Manager disagrees. In addition, the Construction Manager must submit to the Executive Director a copy of the Notice of Appeal.

29.5 Appeal

After receipt of the Construction Manager’s Notice of Appeal, the Vice Chancellor shall investigate the Dispute, may require additional information from CUCF staff and from the Construction Manager, and may meet with the Construction Manager, including any relevant sub-professional, and CUCF staff to resolve the Dispute. The Vice Chancellor may resolve the Construction Manager’s Dispute by negotiating terms acceptable to both the Construction Manager and CUCF. The Vice Chancellor shall put in writing any such resolution to be executed by the Construction Manager and the CUCF. Alternatively, after completing this investigation of the Dispute, the Vice Chancellor may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written final decision that CUCF shall provide to the Construction Manager and to the Executive Director for implementation. If the Vice Chancellor is unable

to resolve the Dispute within thirty (30) consecutive calendar days of receiving the Notice of Appeal or if within ten (10) consecutive calendar days after the Construction Manager receives from the Vice Chancellor a written final decision with which the Construction Manager disagrees, the Construction Manager, on its own behalf and on behalf of a sub-professional, agrees that its only remedy shall be an appeal pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.

ARTICLE 30 – RECORD KEEPING FOR EXTRA OR DISPUTED WORK

30.1 While the Construction Manager or any of its Subcontractors is performing Extra Work on a time-and-material-basis ordered by the Director under Article 28, or is performing disputed Work, or complying with a determination or order under protest in accordance with Article XVI of the General Conditions, in each such case the Construction Manager shall furnish the Director's Representative daily in arrears with three (3) copies of written statements signed by the Construction Manager's representative at the Site showing:

30.1.1 The name and number of each Worker employed on such Work or engaged in complying with such determination or order, the number of hours employed, and the character of the Work each is doing; and

30.1.2 The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such Work or compliance with such determination or order, and from whom purchased or rented.

30.2 A copy of such statement will be countersigned by the Director's Representative, noting thereon any items not agreed to or questioned, and will be returned to the Construction Manager within two (2) days after submission.

30.3 The Construction Manager and its Subcontractors, when required by the Director, or the Comptroller, shall also produce for inspection, at the office of the Construction Manager or Subcontractor, any and all of its books, bid documents, financial statements, vouchers, records, daily job diaries and reports, and canceled checks, and any other documents relating to showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such Work, or in complying with such determination or order, and the amounts expended therefore, and shall permit the Director and the Comptroller to make such extracts therefrom, or copies thereof, as they or either of them may desire.

30.4 In connection with the examination provided for herein, the Director, upon demand therefore, will produce for inspection by the Construction Manager such records as the Agency may have with respect to such Extra or disputed Work performed under protest pursuant to order of the Director, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Construction Manager's claim.

30.5 Failure of the Construction Manager to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such Work or compliance with such determination or order.

ARTICLE 31 - OMITTED WORK

31.1 If any Work in a lump-sum subcontract, or if any part of a lump-sum item in a unit price, lump-sum, or percentage-bid subcontract is omitted by the Director pursuant to Article 33, the subcontract price, subject to audit by CUCF, shall be reduced by a pro-rata portion of the lump-sum bid amount based upon the percent of Work omitted, subject to Article 31.4. For the purpose of determining the pro rata portion of the lump sum bid amount, the bid breakdown submitted in accordance with Article 42 shall be considered, but shall not be the determining factor.

31.2 If the whole of a lump-sum item or units of any other item is so omitted by the Director in a unit price, lump-sum, or percentage-bid subcontract, then no payment will be made therefore, except as provided in Article 31.4.

31.3 For units that have been ordered but are only partially completed, the unit price shall be reduced by a pro-rata portion of the unit price bid based upon the percentage of Work omitted, subject to Article 31.4.

31.4 In the event a Subcontractor, with respect to any omitted Work, has purchased any non-cancelable material and/or equipment that is not capable of use except in the performance of the subcontract and has been specifically fabricated for the sole purpose of the subcontract, but not yet incorporated into the Work, the Subcontractor shall be paid for such material and/or equipment, as set forth below; provided, however, such payment is contingent upon the Subcontractor's delivery of such material and/or equipment in acceptable condition to a location designated by CUCF.

31.4.1 Payment for such material and/or equipment shall be in accordance with Article 28, subject to the following modification. For the purpose of payment hereunder, the percentage for overhead and profit set forth in Article 28.1.8 shall be reduced from twenty (20%) percent to five (5%) percent.

31.5 The Construction Manager and its Subcontractors agree to make no claim for damages or for loss of overhead and profit with regard to any omitted Work.

ARTICLE 32 - THE DIRECTOR'S REPRESENTATIVE

32.1 The Director's Representative shall be the representative of the Director, and, subject to review by the Director, shall have the power, in the first instance, to inspect the performance of the Work and exercise such other authority as the Director may delegate. Such representative shall not have, however, the authority to issue an Extra Work order, except as specifically designated in writing by the Director.

ARTICLE 33 - THE DIRECTOR

33.1 The Director, in addition to those matters elsewhere herein expressly made subject to the Director's determination, direction or approval, shall have the power: (a) to review and determine finally any and all questions in relation to this Agreement and its performance; and (b) to modify or change this Agreement so as to require: (i) the performance of Extra Work (subject, however, to the limitations specified in Article 26 hereof); or (ii) the omission of Work whenever the Director deems it in the interest of CUCF to do so, or both; and (c) to postpone, delay, suspend or terminate the whole or any part of the Work, whenever in the Director's sole judgment such action is required in the interest of CUCF.

ARTICLE 34 - NO ESTOPPEL

34.1 Neither CUCF nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by CUCF, the Director, the Director's Representative, or any other officer, agent or employee of CUCF, either before or after the final completion and acceptance of the Work and payment therefore:

34.1.1 from showing that the true and correct classification, amount, quality or character of the Work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the Work or any part thereof does not in fact conform with the requirements of this Agreement; and

34.1.2 from demanding and recovering from the Construction Manager any overpayments made, or such damages as CUCF may sustain by reason of the Construction Manager's failure to perform each and every part of his Agreement in strict accordance with its terms, or both.

ARTICLE 35 - EMPLOYEES

35.1 As a material term of this Agreement, the Construction Manager and its Subcontractors shall not employ on the

Work:

35.1.1 anyone who is not competent, faithful and skilled in the Work for which employed; and whenever the Director shall inform the Construction Manager, in writing, that any worker of the Construction Manager or a Subcontractor is, in the Director's sole opinion, incompetent, unfaithful or disobedient, such worker shall be discharged from the Work forthwith, and shall not again be employed upon it; or

35.1.2 any labor, materials or means whose employment, or utilization during the course of this Agreement, may tend to or in any way cause or result in strikes, stoppages, delays, suspension of Work or similar troubles by workers employed by the Construction Manager or Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Agreement, or by other contractors or their Subcontractors pursuant to other contracts, or on any other building or premises owned or operated by CUCF or CUNY, its respective agencies, departments, boards or authorities. Any violation by the Construction Manager of this requirement may, upon certification of the Director, be considered as proper and sufficient cause for terminating the Construction Manager for cause and taking such action as set forth in Article 46 hereof, or such other action as the Director may deem proper; or

35.1.3 in accordance with Section 220.3.e of the New York State Labor Law, any apprentice, unless registered individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Construction Manager as to his Work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by CUCF for the classification of Work being actually performed. The Construction Manager or Subcontractor will be required to furnish written evidence of the registration of a program and of apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the Contract Work and from time to time during the Construction Manager's performance hereunder..

ARTICLE 36 - NO DISCRIMINATION

36.1 As required by New York State Labor Law Section 220.e, it is agreed between the parties hereto as follows:

36.1.1 That in the hiring of employees for the performance of Work under this Agreement or any subcontract hereunder, neither the Construction Manager, Subcontractor, nor any person acting on behalf of such Construction Manager or Subcontractor, shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates;

36.1.2 That neither the Construction Manager, 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 or national origin;

36.1.3 That there may be deducted from the amount payable to the Construction Manager by CUCF under this Agreement a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

36.1.4 That this Agreement may be canceled or terminated by CUCF and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Agreement.

36.1.5 The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale, or distribution of materials, equipment, or supplies shall be limited to operations performed within the territorial limits of the State of New York.

36.2 As required by New York City Administrative Code Section 6-108:

36.2.1 It shall be unlawful for any person engaged in the construction, alteration or repair of building or engaged in the construction or repair of streets or highways pursuant to a contract with CUCF or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with CUCF to refuse to employ or to refuse to continue in any employment any person on Account of the race, color or creed of such person.

36.2.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision 36.2.1 above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

36.2.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this Agreement.

36.2.4 Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

ARTICLE 37 - EQUAL EMPLOYMENT OPPORTUNITY

37.1 This Agreement is subject to, and the Construction Manager covenants to comply with, New York State Executive Law Article 15-A and the Rules and Regulations promulgated thereunder (“Article 15-A”), to the extent Article 15-A applies, and other, comparable statutory provisions. By signing this Agreement, the Construction Manager agrees that:

37.1.1 The Construction Manager will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

37.1.2 When it subcontracts, the Construction Manager will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the owners’, partners’ or shareholders’ race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status;

37.1.3 The Construction Manager will state in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship, or that it is an equal employment opportunity employer;

37.1.4 The Construction Manager will send to each labor organization or representative or workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under the relevant statutes; and

37.1.5 The Construction Manager will furnish all information and reports including an Employment Report before the award of the contract which are required by the relevant statutes, and will permit access to its books, records and accounts by CUCF for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

37.2 The Construction Manager understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with the relevant statutes. After a hearing, CUCF may direct the imposition

of any or all of the following sanctions:

- 37.2.1 disapproval of the contractor;
- 37.2.2 suspension or termination of the contract;
- 37.2.3 declaring the Construction Manager in default; or
- 37.2.4 in lieu of any of the foregoing sanctions, the Director may impose an employment program.

37.3 The Construction Manager agrees to include the provisions of the foregoing paragraphs in every subcontract to which it becomes a party, unless exempted by the relevant statutes, so that such provisions will be binding upon each Subcontractor. The Construction Manager will take such action with respect to any subcontract as may be directed by the Director as a means of enforcing such provisions, including sanctions for noncompliance.

37.4 The Construction Manager further agrees that it will refrain from entering into any contract or contract modification subject to the relevant statutes with a Subcontractor who is not in compliance with their requirements.

ARTICLE 38 - LABOR LAW REQUIREMENTS

38.0 Labor Law Compliance: The Construction Manager shall take appropriate action to ensure compliance by its Subcontractors with the Labor Law.

38.0.1 Subcontracts: The CM/Build Construction Manager shall include the provisions of this Article 38 set forth below in all subcontracts for construction Work for the Project.

38.1 The Construction Manager shall comply strictly with all applicable provisions of the Labor Law, as amended. Such compliance is a material term of this Agreement.

38.2 The Construction Manager specifically agrees, as required by Labor Law Section 220 and 220-d, as amended, that:

38.2.1 Hours of Work: No laborer, worker, or mechanic in the employ of the Construction Manager, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by this Agreement shall be permitted or required to work more than eight (8) hours in any one (1) calendar Day, or more than five (5) Days in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

38.2.2 In situations in which there are not sufficient laborers, workers and mechanics who may be employed to carry on expeditiously the Work contemplated by this Agreement as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement or prosecution or completion without undue delay of the Work is necessary for the preservation of the Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) Day; or five (5) Days in any one (1) week; provided, however, that upon application of any Construction Manager, the Director shall have first certified to the Director of Labor of the State of New York (hereinafter "Director of Labor") that such public Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Director of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

38.2.3 Failure of the Director to make such a certification to the Director of Labor shall not entitle the Construction Manager to damages for delay or for any cause whatsoever.

38.2.4 Prevailing Rate of Wages: The wages to be paid for a legal day's Work to laborers, workers, or mechanics employed upon the Work contemplated by this Agreement or upon any materials to be used thereon shall not

be less than the "prevailing rate of wage" as defined in Labor Law Section 220, and as fixed by the Comptroller in the attached Schedule of Wage Rates and in updated schedules thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Work is being performed.

38.2.5 Requests for interpretation or correction in the Information for Bidders include all requests for clarification of the classification of trades to be employed in the performance of the Work under this Agreement. In the event that a trade not listed in the Agreement is in fact employed during the performance of this Agreement, the Construction Manager shall be required to obtain from the Agency the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this Agreement at the price at which the Agreement was awarded.

38.2.6 Minimum Wages: Except for employees whose wage is required to be fixed pursuant to Labor Law Section 220, all persons employed by the Construction Manager and any Subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor, or services, used in the performance of this Agreement, shall be paid, without subsequent deduction or rebate unless expressly authorized by Law, not less than the sum mandated by Law. Minimum wages shall be the rates fixed by Federal Law and regulations.

38.3 Working Conditions: No part of the Work, labor, or services shall be performed or rendered by the Construction Manager in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Agreement. Compliance with the safety, sanitary and factory inspection Laws of the state in which the Work is to be performed shall be prima facie evidence of compliance with this article.

38.4 Prevailing Wage Enforcement: The Construction Manager agrees to pay for all costs incurred by CUCF in enforcing prevailing wage requirements, including the cost of any investigation conducted by or on behalf of the Agency or the Comptroller, where CUCF discovers a failure to comply with any of the requirements of this Article 38 by the Construction Manager or its Subcontractor(s). The Construction Manager also agrees, that should it fail or refuse to pay for any such investigation, the Agency is hereby authorized to deduct from a Construction Manager's Account an amount equal to the cost of such investigation.

38.4.1 The Labor Law Section 220 and Section 220-d, as amended, provide that this Agreement shall be forfeited and no sum paid for any Work done hereunder on a second conviction for willfully paying less than:

- (a) The stipulated wage scale as provided in Labor Law Section 220, as amended, or
- (b) Less than the stipulated minimum hourly wage scale as provided in Labor Law Section 220-d, as amended.

38.4.2 For any breach or violation of either Working Conditions and Minimum Wages, the party responsible therefore shall be liable to CUCF for liquidated damages, which may be withheld from any amounts due on any contracts with CUCF of such party responsible, or may be recovered in suits brought by counsel in the name of CUCF, in addition to damage for any other breach of this Agreement, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Agreement. In addition, the Director shall have the right to cancel contracts and enter into other contracts for the completion of the original Agreement, with or without public letting, and the original Construction Manager shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit Account and shall be paid without interest, on order of the Comptroller, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose Account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within two (2) years from the date of actual notice to the Construction Manager of the withholding or recovery of such sums by CUCF.

38.4.3 A determination by the Comptroller that a Construction Manager and/or its Subcontractor willfully violated Labor Law Section 220 will be forwarded to the appropriate District Attorneys for review.

38.4.4 The Construction Manager's or Subcontractor's noncompliance with this article and Labor Law Section 220 may result in an unsatisfactory performance evaluation and the Comptroller may also find and determine that the Construction Manager or Subcontractor willfully violated the New York Labor Law.

- (a) An unsatisfactory performance evaluation for noncompliance with this article may result in a determination that the Construction Manager is a non-responsible bidder/proposer on subsequent procurements with CUCF or any other public owner and thus a rejection of a future award of a contract with CUCF, as well as any other sanctions provided for by Law.
- (b) Labor Law Section 220-b, as amended, provides that when two (2) final determinations have been rendered against a Construction Manager or Subcontractor within any consecutive six (6) year period determining that such Construction Manager or Subcontractor has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with the Labor Law and this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such Construction Manager or Subcontractor shall be ineligible to submit a bid on or be awarded any public work contract with CUCF for a period of five (5) years from the second final determination. If the final determination involves the falsification of payroll records or the kickback of wages or supplements, the Construction Manager or Subcontractor shall be ineligible to submit a bid on or be awarded any public work contract with CUCF for a period of five (5) years from the first final determination.
- (c) Labor Law Section 220, as amended, provides that the Construction Manager or Subcontractor found to have violated this article may be directed to make payment of wages or supplements including interest found to be due, and the Construction Manager or Subcontractor may be directed to make payment of a further sum as a civil penalty in an amount not exceeding twenty-five (25%) percent of the total amount found to be due.

38.5 The Construction Manager and its Subcontractors shall within ten (10) Days after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory, building, and structure where employees of the Construction Manager and its Subcontractors engaged in the performance of this Agreement are employed, notices furnished by CUCF, in relation to prevailing wages and supplements, minimum wages and other stipulations contained in Section 220 of the Labor Law, and the Construction Manager and its Subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services required to be furnished or rendered under this Agreement.

38.6 The Construction Manager shall comply strictly with all of the provisions of Articles 38.6.1 through 38.6.5, and provide for all workers, laborers, and mechanics in its employ, the following:

38.6.1 Notices Posted At Site: Post, in a location designated by CUCF, schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the Site, CUCF notice that this Project is a public works Project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which CUCF directs the Construction Manager to post. The Construction Manager shall provide a surface for such notices which is satisfactory to CUCF. The Construction Manager shall maintain and keep current such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible, or removed for any reason. The Construction Manager shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete; and

38.6.2 Daily Site Sign-in Sheets: Maintain daily Site sign-in sheets, and require that Subcontractors maintain daily Site sign-in sheets for its employees, which include blank spaces for an employee's name to be both printed and signed, job title, date started and Social Security number, the time the employee began Work and the time the employee

left Work, until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services to be furnished or rendered under this Agreement unless exception is granted by the Comptroller upon application by the Agency. In the alternative, subject to the approval of the Director, the Construction Manager and Subcontractor may maintain an electronic or biometric sign-in system, which provides the information required by this Article 38.6.2; and

38.6.3 Individual Employee Information Notices: Distribute a notice, to each worker, laborer or mechanic employed under this Agreement, in a form provided by the Agency, that this Project is a public work project on which each worker, laborer or mechanic is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker, laborer, or mechanic includes employees of the Construction Manager and all Subcontractors and all employees of suppliers entering the Site. Such notice shall be distributed to each worker before he or she starts performing any Work of this Agreement and with the first paycheck after July first of each year. At the time of distribution, the Construction Manager shall have each worker, laborer or mechanic sign a statement, in a form provided by the Director, certifying that the worker has received the notice required by this article, which signed statement shall be maintained with the payroll records required by this Agreement; and

- (a) The Construction Manager and each Subcontractor shall notify each worker, laborer, or mechanic employed under this Agreement in writing of the prevailing rate of wage for their particular job classification. Such notification shall be given to every worker, laborer and mechanic on their first pay stub and with every pay stub thereafter; and

38.6.4 Site Laminated Identification Badges: Provide laminated identification badges which indicate the worker's, laborer's or mechanic's name, trade, employer's name and employment starting date (month/day/year). Further, require as a condition of employment on the Site, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of CUCF; and

38.6.5 Language Other Than English Used On Site: Provide the Contracting Officer notice when three (3) or more employees (worker and/or laborer and/or mechanic) on the Site, at any time, speak a language other than English. The Contracting Officer will then provide the Construction Manager the notices in Article 38.6.1 in that language or languages as may be required. The Construction Manager is responsible for all distributions under Article 38; and

38.6.6 Provision of Records: The Construction Manager and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Director, the Director's Representative, the Contracting Officer, or the Comptroller, such records as are required to be kept by this Article 38.6; and

38.6.7 If this Agreement is for an amount greater than \$1,000,000, checks issued by the Construction Manager to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency). For any subcontract for an amount greater than \$750,000, checks issued by a Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency); and

38.6.8 The failure of the Construction Manager or Subcontractor(s) to comply with the provisions of Articles 38.6.1 through 38.6.7 may result in the Director declaring the Construction Manager or Subcontractor(s) in default and/or the withholding of payments otherwise due under the Agreement.

38.7 The Construction Manager and its Subcontractors shall keep such employment and payroll records as are required by Section 220 of the Labor Law.

38.8 At the time the Construction Manager makes application for each partial payment and for final payment, the Construction Manager shall submit to the Director a written payroll certification, in the form provided by this Agreement, of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by Labor Law Section 220. This certification of compliance with the provisions of this article shall be a condition

precedent to payment and no payment shall be made to the Construction Manager unless and until each such certification shall have been submitted to and received by the Director.

38.9 This Agreement is executed by the Construction Manager with the express warranty and representation that the Construction Manager is not disqualified under the provisions of Section 220 of the Labor Law for the award of the Agreement.

38.10 Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Agreement, and grounds for cancellation thereof by CUCF.

ARTICLE 39 - PAYROLL REPORTS

39.0 Compliance: The Construction Manager shall take appropriate action to ensure compliance by its Subcontractors with the payroll requirements set forth herein.

39.0.1 Subcontracts: The Construction Manager shall include the provisions of this Article 39 set forth below in all subcontracts for construction Work for the Project.

PAYROLL REPORTS

39.1 The Construction Manager shall maintain on the Site the original payrolls or transcripts thereof which the Construction Manager and its Subcontractor(s) are required to maintain pursuant to Labor Law Section 220. The Construction Manager and Subcontractor(s) shall submit original payrolls or transcripts, subscribed and affirmed by it as true, with each and every payment requisition. The Construction Manager and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Director, the Contracting Officer, or the Comptroller, such original payrolls or transcripts thereof, subscribed and affirmed by it as true, and the statements signed by each worker pursuant to this Agreement. In addition, the Construction Manager and Subcontractor(s) shall furnish to the Director upon written demand any other information to satisfy the Director that this Agreement and the Labor Law, as to the hours of employment and rates of wages, are being observed. The Construction Manager shall maintain the payrolls or transcripts thereof during the term of this Agreement and for six (6) years from the date of completion of the Work on this Agreement.

39.2 When directed by the Director's Representative, the Construction Manager or Subcontractor shall provide an attendance sheet for each Day on which Work is performed on the Site. Such attendance sheet shall be in a form acceptable to the Agency and shall provide information for employees of the Construction Manager and Subcontractor(s).

ARTICLE 40 - DUST HAZARDS

40.1 Should a harmful dust hazard be created in performing the Work of this Agreement, for the elimination of which appliances or methods have been approved by the Board of Standards and Appeals of the State of New York, such appliances and methods shall be installed, maintained, and effectively operated during the continuance of such harmful dust hazard. Failure to comply with this provision after notice shall make this Agreement void.

ARTICLE 41 - NOISE CONTROL CODE PROVISIONS

41.1 In accordance with the provisions of Section 24-216 (b) of the Administrative Code ("Administrative Code"), Noise Abatement Contract Compliance, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Agreement and which are subject to the provisions of the Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Administrative Code. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise

emitted or produced by such devices and activities, in accordance with regulations issued by the Director of the Department of Environmental Protection.

41.2 The Construction Manager agrees to comply with Section 24-219 of the Administrative Code ("Administrative Code") and implementing rules codified at 15 Rules of The City of New York ("RCNY") Section 28-100 et. seq. In accordance with such provisions, the Construction Manager, if the Construction Manager is the responsible party under such regulations, shall prepare and post, and, if not the responsible party, shall cause to be posted by the responsible party, a Construction Noise Mitigation Plan at each work site, in which the Construction Manager shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Construction Manager cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the New York City Department of Environmental Protection. In addition, the Construction Manager's certified Construction Noise Mitigation Plan is subject inspection by the Department of Environmental Protection in accordance with 15 RCNY §28-101. No Contract Work may take place at a worksite unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Construction Manager shall create and implement a noise mitigation-training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of law.

41.3 The Construction Manager acknowledges that the Project may be, or may be adjacent to, an occupied and operational facility. The Construction Manager agrees to comply with reasonable written direction from the Director from time to time to reduce the noise level of its construction activities as an accommodation to the occupants and their use of such facility.

ARTICLE 42 - PAYMENT TERMS AND CONDITIONS

42.1 General

42.1.1 Total Payments: Total payments for all services performed and all expenses incurred pursuant to this Agreement shall not exceed the Total Not-to-Exceed Amount set forth in Exhibit A.

42.1.2 Executory Only: This Agreement shall be deemed executory only to the extent of the moneys appropriated and available for the purpose of the Agreement and no liability or account thereof shall be incurred beyond the amount of such moneys. It is therefore understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of this Agreement.

42.1.3 Task Orders: Task Orders issued hereunder shall specify an overall not-to-exceed amount for the services to be performed thereunder. Such overall not-to-exceed amount shall be broken down into various amounts and/or allowances, including without limitation the following: (1) Allowance for Design Services; (2) Estimated Fee for Profit; (3) Allowance for Staffing Expenses; (4) Allowance for Construction Services; (5) Allowance for Miscellaneous Expenses; and (6) Allowance for Additional Services.

42.1.4 Allowances: In the event the allowance amounts described in this Article are not sufficient, as determined by the Director, to cover the cost of the items of required Work for which allowance amounts are specified, CUCF will increase the amounts of such allowances.

42.1.5 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in Exhibit A, the Director may, by issuance of a "No Cost Change Order" to the Construction Manager, reallocate such specific allowance amounts within this Article 42.

42.2 Fee for Design Services

42.2.1 Each Task Order shall specify an allowance amount for payment for design services in accordance

with the provisions set forth below. The Design Fee shall be deemed to include all costs and expenses incurred by the Construction Manager’s Consultant and/or its Sub-consultant(s) in the performance of all required Design Services for each Project, including all expenses related to management, overhead and any anticipated profit.

42.2.2 Payment of Design Fee: The Design Fee shall be paid to the Construction Manager as set forth below.

(a) Design Phase: For the performance of all required services in connection with the preparation of design documents for the Project, the Construction Manager shall be paid seventy-five (75%) of the Design Fee. Partial payment of this amount shall be in accordance with the percentage breakdown set forth below, upon written acceptance by CUCF of the specified design documents. CUCF may, through the Task Order, modify the deliverables and percentages set forth below.

Schematic Design Documents	10% of the Design Fee
Design Development Documents	20% of the Design Fee
Final Design Documents	45% of the Design Fee

(b) Partial Payments During Design Phase: Partial payments of the lump sum fee per deliverable set forth above may be made to the Construction Manager on a monthly basis, based upon CUCF’s determination that the Construction Manager is progressing the required work for the deliverable in a satisfactory fashion and in accordance with the project schedule; provided, however, partial payments for the deliverable may not exceed 50% of the lump sum fee for the same, unless the Construction Manager submits a draft of the deliverable demonstrating satisfactory progress of the work. Total payment of the lump sum fee per deliverable shall not be made until written acceptance by CUCF of the deliverable.

(c) Construction Phase: For the performance of all required services during construction for the Project, the Construction Manager shall be paid twenty-five (25%) percent of the Design Fee. Partial payment of this amount shall be in accordance with the percentage of completion of all required services during construction, as determined by CUCF.

42.2.3 Calculation of Design Fee: The Design Fee shall be calculated in accordance with the terms and conditions set forth in Exhibit C.

42.2.4 Estimated Design Fee: For partial payment purposes, the Design Fee shall be calculated as a percent of the total estimate of the cost of construction of the Project approved in writing by CUCF at the commencement of the Preliminary Design Phase (the “Estimated Design Fee”). In the event the total of all partial payments of the Estimated Design Fee is more than the total Design Fee determined hereunder, CUCF shall deduct and retain such excess out of any amount due and owing to the Construction Manager. In the event the amount due and owing to the Construction Manager is less than the amount of such excess payment of the Design Fee, the Construction Manager shall be liable to pay the difference upon demand by CUCF. In the event the total of all partial payments of Estimated Design Fee is less than the total Design Fee determined hereunder, CUCF shall pay such difference to the Construction Manager.

42.2.5 Complexity / Simplicity Factors: The Design Fee calculated in accordance with the Fee Curve may be subject to adjustment in accordance with the complexity and/or simplicity factors set forth above. The application of such factors, as well as the percentage increase or decrease in the Design Fee resulting from such application, shall be determined solely by CUCF.

42.2 Fee for Profit

42.2.1 Each Task Order shall specify an allowance amount for payment of the Fee for Profit in accordance

with the provisions set forth below.

42.2.2 The Construction Manager shall be paid a Fee for Profit, the amount of which shall be calculated as a percent of the total actual cost of construction for the Project in accordance with the Fee Curve set forth in Exhibit C. For the purpose of calculating the Fee for Profit, the total actual cost of construction for the Project shall be as defined below.

- (a) Payment: The Fee for Profit shall be paid to the Construction Manager during the Construction Phase, in accordance with the completion milestones set forth below, as determined by the Director.

Completion Milestones	Percent of Fee for Profit Payable
25% Completion of the Work	25%
50% Completion of the Work	25%
Substantial Completion of the Work	35%
Completion of all Post Construction Services	15%

- (b) Interim Percent: For partial payment purposes only, the amount of the Fee for Profit shall be calculated using the percent set forth in the Fee Curve (Exhibit C) for a construction cost that is equal to the amount of the pre-preliminary reconciled construction cost estimate for the Project (the “Interim Percent”). The Director may by written directive modify the Interim Percent based upon revisions to the estimate or the receipt of bid prices for the construction subcontracts.

42.2.3 Total Actual Construction Cost: For the purpose of the Fee Curve (Exhibit C), the total actual cost of construction for the Project shall be defined as the total dollar value of all required construction Work for the Project, calculated in accordance with bid prices contained in the construction subcontracts, which has been accepted by the Director and paid for hereunder. Such total actual cost of construction shall not include the items set forth below. The total actual cost of construction for the Project shall be determined by the Director, and his/her determination shall be final, binding, and conclusive.

- (a) Any amounts for change orders to the construction subcontracts, except for a change order which meets the following conditions: (1) the change order increases the scope of work for the Project, and (2) the total amount of other scope increasing change orders issued to date exceeds five (5%) percent of the total dollar value of all construction work as described above;
- (b) Any amounts for the assessment of liquidated damages which have been deducted from construction subcontracts;
- (c) Any allowance amounts or otherwise designated funds for construction Work, whether for specified lump sum items or for unit price items, included in the original subcontract price that remain unexpended at the conclusion of the subcontract;
- (d) Any amounts for bonus payments, whether payment is by change order or through an allowance provided in the subcontract;
- (e) Any amounts for Work omitted from the construction subcontracts, and
- (f) Any amounts for construction Work which is determined to be defective, unsatisfactory or not in accordance with the Construction Documents.

42.2.4 Total Fee for Profit: Upon completion of all required services by the Construction Manager, the total Fee for Profit for the Project shall be determined as follows: the total actual cost of construction for the Project, as defined above, shall be multiplied by the applicable percent set forth in the Fee Curve (Exhibit C). For total actual construction costs between the dollar levels designated in the Fee Curve, the Fee for Profit shall be interpolated on a straight-line basis between the corresponding two-dollar levels. The Fee Curve set forth in Exhibit C shall apply to the Agreement term and any extension thereof. Partial payments to the Construction Manager of the estimated Fee for Profit shall be subject to adjustment as set forth below.

- (a) In the event the total of all partial payments of the estimated Fee for Profit is more than the total Fee for Profit determined hereunder, CUCF shall deduct and retain such excess out of the amount due and owing to the Construction Manager. In the event the amount due and owing to the Construction Manager is less than the amount of such excess payment of the Fee for Profit, the Construction Manager shall be liable to pay the difference upon demand by the Director.
- (b) In the event the total of all partial payments of the estimated Fee for Profit is less than the total Fee for Profit determined hereunder, CUCF shall pay such difference to the Construction Manager.

42.3 Staffing Expenses

42.3.1 Allowance: Each Task Order shall specify an allowance amount for payment of the Construction Manager’s staffing expenses for those construction management personnel who have been assigned to the Project and are identified in the Staffing Plan approved by the Director (the “Assigned Personnel” or the “Assigned Employee”). The Construction Manager shall not be entitled to payment for staffing expenses for: (1) any Project Executive(s), and (2) any personnel not included in the approved Staffing Plan.

42.3.2 Payment: For any week during which an Assigned Employee performed services for the Project, payment to the Construction Manager for such employee’s services for that week shall be calculated as follows: Multiply the amount set forth in paragraph (a) by the number set forth in paragraph (b), and then multiply the result by a Multiplier of 2.00; provided, however, the Multiplier shall **NOT** apply to any increase in the Assigned Employee’s Direct Salary Rate per hour for authorized services performed during other than regular business hours.

- (a) Assigned Employee’s Direct Salary Rate per hour, as determined and approved in writing by the Director in accordance with the provisions set forth below. In the event the Construction Manager received written authorization from the Director to have the Assigned Employee perform services during other than regular business hours, the employee’s Direct Salary Rate per hour may be subject to an increase, as provided below.
- (b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for this Project. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Employee performed services for any other project, and (4) any hours other than regular business hours, unless otherwise authorized in advance, in writing by the Director.
- (c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed for this Project. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard Accounting practices.
- (d) The costs deemed included in the Multiplier of 2.00 are set forth in Article 42.3.7 below.

42.3.3 Equitable Reduction: The amount of payment to the Construction Manager for services performed for the Project by an Assigned Employee, calculated as set forth above, shall be subject to an equitable reduction if, for the week during which an Assigned Employee performed services for the Project, the total number of hours for which the Assigned Employee was actually paid by the Construction Manager for that week, less any non-billable hours, is less than the total number of hours actually billed by the Construction Manager to all entities for the Assigned Employee’s services for that week, including the number of hours billed for this Project. In such event, the amount of payment to the Construction Manager for services performed by an Assigned Employee for the week in question, calculated as set forth above, shall be reduced by multiplying such amount by the following: the fractional number resulting from the division of the number set forth in item (a) below by the number set forth in item (b).

- (a) total number of hours for which the Assigned Employee was actually paid by the Construction Manager for the week in question, less any non-billable hours, as defined above.
- (b) total number of hours actually billed by the Construction Manager to all entities for the Assigned Employee's services for the week in question, including the number of hours billed for this Project

42.3.4 Direct Salary Rates: Direct Salary Rates per hour for each Assigned Employee shall be determined and approved in writing by the Director, as set forth below.

- (a) For each Assigned Employee, the Construction Manager shall submit such employee's actual annual direct salary, as defined below. In addition, the Construction Manager shall submit any records or documentation requested by the Director to verify the Assigned Employee's actual annual direct salary rate, including without limitation, the Construction Manager's payroll register for the past twelve months.
 - (1) An Assigned Employee's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall **NOT INCLUDE** any amount for the following costs or payments: (1) any payments for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (2) any employer payments mandated by law, including without limitation, social security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) any costs for any other fringe and/or supplemental benefits.
 - (2) To compute an Assigned Employee's actual annual direct salary per hour, the Assigned Employee's actual annual direct salary, as defined above, shall be divided by 2080.
- (b) For each Assigned Employee, the Director shall determine and approve in writing the Direct Salary Rate per hour to be paid for such employee. An Assigned Employee's Hourly Rate per hour shall be the LESSER of (1) the Assigned Employee's actual annual direct salary, computed on an hourly basis in accordance with paragraph (a)(2) above, or (2) the estimated direct salary rate per hour for the Assigned Employee's title set forth in Exhibit C; provided, however, CUCF, in its sole and absolute discretion, may approve, as a Hourly Rate per hour payable for any Assigned Employee hereunder, an actual annual direct salary, computed on an hourly basis, that exceeds the estimated direct salary rate per hour set forth in Exhibit C. Once determined and approved by the Director, the Assigned Employee's Direct Salary Rate shall not be eligible for any increase whatsoever, except for the increase described in Article 42.3.5 below. Any such increase must be approved in writing by the Director.

42.3.5 Increases in Direct Salary Rates: An Assigned Employee's Direct Salary Rate per hour, determined and approved by the Director, shall be subject to increases on a yearly basis, except as otherwise provided below. The first such increase shall be made one (1) year after the date of the advice of award. Thereafter, for the remainder of the Contact term, or any extension thereof, increases in the Direct Salary Rate(s) shall be made on a yearly basis, on the anniversary date of the advice of award. Any increase in the Direct Salary Rate(s) shall be based on an increase in the Employment Cost Index for Construction Manager, Specialty, and Technical Occupations, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"). Any increase in the Direct Salary Rate(s) shall be applied on a prospective basis only. If for the prior year, the Index showed an increase, the Direct Salary Rate(s) shall be increased in accordance with the Index. If, for the prior year, the Index declined or showed no increase, the Direct Salary Rate(s) shall remain unchanged.

- (a) The Construction Manager shall not be entitled to payment of any increase in an Assigned Employee's Direct Salary Rate per hour unless the total amount of such increase is actually paid in full by the Construction Manager to the Assigned Employee, as determined by the Director. The
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Construction Manager shall submit its payroll register to verify the amount actually paid by the Construction Manager to the Assigned Employee.

42.3.6 Night Differential / Overtime: The Director may authorize the Construction Manager in advance in writing to have an Assigned Employee perform services during other than regular business hours. In the event of such authorization, the Construction Manager shall be entitled to payment of a premium or increase in the Assigned Employee's Direct Salary Rate per hour for such services, subject to the limitations set forth below:

- (a) The Construction Manager's policy is subject to approval by the Director in accordance with Article 11.
- (b) The premium for Night Differential shall not exceed ten (10%) percent of the Assigned Employee's Direct Salary Rate per hour, and the premium for Overtime shall not exceed fifty (50%) percent of such Direct Salary Rate.
- (c) The Construction Manager shall not be entitled to payment of any premium unless the total amount of such premium is actually paid in full by the Construction Manager to the Assigned Employee, as evidenced by the Construction Manager's payroll register.

42.3.7 Multiplier: The Multiplier of 2.00 shall be deemed to include all costs and expenses for overhead incurred by the Construction Manager in connection with providing services for the Project, including expenses for management and administration. The Multiplier shall include, without limitation, the items set forth below:

- (a) All expenses for compensation paid to personnel of the Construction Manager (other than construction management personnel identified in the approved Staffing Plan, except for the Project Executive). Such other personnel of the Construction Manager shall include without limitation all officers, principals, employees and personnel of the Construction Manager, serving in whatever capacity, including any Project Executive(s). Compensation for such other personnel is deemed included in the Multiplier. Compensation shall include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, social security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.
 - (b) All expenses for compensation paid to those construction management personnel identified in the approved Staffing Plan that are in excess of the Direct Salary Rates for such personnel payable hereunder. Compensation for such personnel shall include without limitation: (1) wages and/or salaries that are in excess of the Direct Salary Rate payable hereunder; (2) all payments mandated by law, including without limitation, social security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (2) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (3) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (4) costs for any and all other fringe and/or supplemental benefits.
 - (c) All expenses in connection with the performance of services, including without limitation: (1) expenses for related services, as set forth in Article 11, (2) meals, and (3) lodging.
 - (d) All expenses for home office general facilities, including, but not limited to, rental cost or depreciation factor, light, heat and water, telephone charges, including all charges for calls to the job site and DDCM (except for long distance calls to other locations as specifically required by the Director), sales, Accounting fees and bookkeeping expenses, electronic data processing services, including programming and rental equipment, dues and subscriptions, stationery, printing, copying, postage, and any other office expenses or overhead costs, except as otherwise expressly provided in this Article 42 as a reimbursable miscellaneous expense.
 - (e) All expenses for applicable taxes of any kind whatsoever, including without limitation, federal, state,
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- and local income tax, and any franchise or other business taxes.
- (f) All expenses for insurance coverage determined by the Construction Manager to be necessary for the performance of all required services hereunder, including without limitation: (1) all insurance required by this Agreement; (2) all insurance required by law, and (3) all other insurance maintained by the Construction Manager, including without limitation, burglary and theft, general fidelity and payroll insurance.
 - (g) All expenses in connection with losses due to theft or robbery sustained by Construction Manager.
 - (h) All expenses in connection with fixed capital or moneys borrowed, including interest.
 - (i) All expenses with respect to legal services.
 - (j) All management, administrative or overhead expenses of any kind whatsoever, including such expenses in connection with performing additional services or providing miscellaneous items.

42.3.8 Representations: With respect to staffing expenses, the Construction Manager covenants and represents the following: (1) it shall incur only those staffing expenses which are necessary and reasonable, based on standard practice in the construction industry, to complete the Project, and (2) it shall ensure that staffing expenses do not exceed the Allowance for Staffing Expenses provided for herein. Any deviations or anticipated deviations from the Allowance for Staffing Expenses, even those deviations which do not involve an increase in such allowance, will not be paid, unless approved in advance in writing by the Director.

42.4 Construction Work

42.4.1 Each Task Order shall specify an allowance amount for payment for construction work for the Project performed by Subcontractors under the supervision and control of the Construction Manager.

42.4.2 The total amount to be paid from the Allowance for Construction Work shall not exceed the cumulative total of the amounts for which subcontracts for construction work for the Project are awarded pursuant to Article 10 and the amounts of any change orders to such subcontracts. No amounts shall be paid from the Allowance for Construction Work, unless the Director has given prior written approval to the amount of award of the subcontract and the amount of any change orders thereto, as required by Article 10.

42.4.3 Bid Breakdown of Subcontract Price: Upon commencement of construction, the Construction Manager shall submit a bid breakdown of construction costs on a per subcontract basis, and any other information that may be required by the Director. The breakdown for each subcontract must be approved in writing by the Director's Representative. No partial payment will be made until the bid breakdown is approved. The breakdown shall be used for checking the Construction Manager's requests for partial payment for construction work performed by Subcontractors and shall not be binding on the Director for any purpose whatsoever.

42.4.4 Partial Payments: Partial payments to the Construction Manager for construction Work performed by Subcontractors shall be on the basis of and in proportion to the percentage of completion of all construction Work required under the subcontract, as determined by the Director. Until Substantial Completion of the Work, the Director shall deduct and retain 5% of the value of the construction Work certified for payment in each partial payment voucher. Upon determination by the Director that the Work required is substantially complete, the retainage shall be reduced to 1% of the value of the construction Work certified for payment in each partial payment voucher, which amount shall be retained by CUCF in accordance with the Article 25 hereof.

- (a) With respect to construction Work, partial payments may be made for materials, fixtures, and equipment in advance of their actual incorporation in the work, subject to approval by the Director and compliance with the requirements set forth in Exhibit D.
- (b) In connection with every partial payment requisition for construction Work, the Construction Manager shall also submit a verified statement in the prescribed form setting forth the information required under Section 220(a) of the Labor Law.

42.4.5 Substantial Completion Requisition: Upon written determination by the Director that the Work is substantially complete, the Construction Manager shall submit a requisition for a Substantial Completion payment. The Construction Manager must submit the following with such requisition:

- (a) Final verified statement of any and all alleged claims against CUCF, and any pending dispute resolution procedures in accord with this agreement, in any way connected with or arising out of this Agreement (including those as to which details may have been furnished pursuant to this Agreement). With respect to each such claim, the Construction Manager shall set forth the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Construction Manager claims the performance of the Work or a particular part thereof, was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the Director and the Comptroller shall have the same right to inspect, and to make extracts or copies of, books, vouchers, records, etc., of the Construction Manager or the Subcontractor. Nothing contained in this Article is intended to or shall relieve the Construction Manager from the obligation of giving timely notice of claims pursuant to other provisions of this Agreement. The Construction Manager is warned that unless such claims are completely set forth as herein required, the Construction Manager, upon acceptance of the Substantial Completion payment pursuant to this Article, will have waived any such claims arising out of the Work for which payment is requested.
- (b) Final written complete punch list and a date for completion of all required Work. The punch list and completion date are subject to the written acceptance of the Director.
- (c) If required, a request for a substantial or final extension of time.

42.4.6 Substantial Completion Payment: The Director shall issue a voucher calling for payment to the Construction Manager of any part or all of the balance due for Work for which payment is requested, including moneys retained hereunder, less any and all deductions authorized to be made by the Director, under this Agreement or by law, and less twice the amount the Director considers necessary to ensure the completion of the balance of the Work. No further partial payments shall be made to the Construction Manager after the Director determines that the Work is substantially complete, except the Substantial Completion payment and any requisitions for partial payment that were properly filed with the Director prior to the date of Substantial Completion; provided, however, the Director may grant a waiver for further partial payments after the date of Substantial Completion to permit payments for change order work and/or release of retainage and deposits pursuant to Article 25. Such waiver shall be in writing.

42.4.7 Final Payment: After Final Acceptance by the Director of the Work, the Construction Manager shall submit all required certificates and documents, together with a requisition for the balance claimed to be due, less the amount authorized to be retained for maintenance under Article 25 hereof. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the Director.

42.4.8 Requisition for Final Payment: The Construction Manager must also submit with the final requisition for Work performed any amendments to the final verified statement of any and all alleged claims against CUCF, and any pending dispute resolution procedures in accord with this Agreement, in any way connected with or arising out of the Work performed for which payment is requested (including those as to which details may have been furnished pursuant to other provisions of this Agreement) that have occurred subsequent to Substantial Completion, setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item. With reference to each permissible claim, the Director and the Comptroller shall have the same right to inspect, and to make extracts or copies of, the books, vouchers, records, etc., of the Construction Manager or Subcontractor, as referred to in other provisions of this Agreement. Nothing contained in this Article, is intended to, or shall, relieve the Construction Manager from the obligation of giving timely notice of claims pursuant to other provisions of this Agreement. The Construction Manager is warned that unless such claims are completely set forth as herein required, the Construction Manager upon acceptance of the final payment, pursuant to Article 44 hereof,

will have waived any such claims arising out of the Work performed for which payment is requested.

42.4.9 Voucher for Final Payment: Upon determining the balance due for Work for which payment is requested, other than on account of claims, the Director's Representative will prepare and certify, and the Director will approve, a voucher for final payment in that amount less any and all deductions authorized to be made by the Director under this Agreement or by law. Such voucher shall thereupon be filed with the Comptroller and a copy thereof delivered to the Construction Manager. The Director shall certify the voucher for final payment for Work performed for which payment is requested following completion and acceptance of the work, provided all requests for extensions of time have been acted upon, if required. Payment pursuant to such final voucher, less any deductions authorized to be made by the Director under this Agreement or by law, shall constitute final payment in accordance with Article 44 hereof.

42.4.10 The Construction Manager shall not be entitled to any mark-up whatsoever on payments for construction Work performed by Subcontractors hereunder.

42.5 Miscellaneous Expenses

42.5.1 Task Orders issued hereunder may contain an allowance for reimbursement of miscellaneous expenses. The Construction Manager shall be reimbursed for expenses actually incurred in the procurement of miscellaneous items in accordance with the terms and conditions set forth below.

- (a) No miscellaneous expenses shall be incurred by the Construction Manager, or reimbursed from this allowance, unless expressly authorized in a written directive from the Director. For miscellaneous expenses in excess of \$150, such written authorization must be provided in advance of the expenditure.
- (b) In the event the Construction Manager is directed to purchase any item(s) pursuant to this allowance, such item(s) shall, unless otherwise directed by the Director, be the sole property of CUCF upon delivery to the designated location. Upon completion of the required work, as directed by the Director, the Construction Manager shall turn such item(s) over to CUCF.
- (c) With respect to miscellaneous expenses, the Construction Manager shall utilize the method of procurement and form of payment directed by the Director.
- (d) Reimbursement for miscellaneous expenses shall be the actual and reasonable cost of the same, with no mark-up for the Construction Manager's overhead and profit. Requests for reimbursement for miscellaneous expenses shall be Accompanied by receipted bills or any other data required by the Director.
- (e) Reimbursement for long distance travel expenses, as set forth in Article 11, shall be in accordance with the normal travel allowances of CUCF for its own employees as provided in New York City's Comptroller's "Directive #6, Travel, Meals, Lodging, and Miscellaneous Agency Expenses." The Construction Manager shall not be entitled to any mark-up with respect to long distance travel expenses. Requests for reimbursement for long distance travel expenses shall be accompanied by receipted bills or any other data required by the Director.
- (f) Miscellaneous items shall be those items determined by the Director to be necessary for the Project and shall include without limitation the items set forth below.
 - (1) equipment specified by DDCM
 - (2) express mail postage, except as otherwise provided in Article 11
 - (3) Builder's Risk Insurance for the Project, if directed by the Director
 - (4) Long distance travel, as set forth in Article 11
 - (5) Printing of bid & contract documents, not to exceed the rates set out in the then current DASNY term-contract for printing.

42.6 Additional Services

42.6.1 Task Orders issued hereunder may contain an allowance for reimbursement for the provision of additional services hereunder. Additional services shall be as defined in Article 11. No additional services shall be provided by the Construction Manager, or reimbursed from this allowance, unless expressly authorized in advance in a written directive from the Director.

42.6.2 With respect to additional services, the Construction Manager shall utilize the method of procurement and form of payment directed by the Director.

42.6.3 Reimbursement for additional services shall be the actual and reasonable cost of the same, with no mark-up for the Construction Manager's overhead and profit.

42.7 Requisitions for Payment

42.7.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions shall be in the authorized form and shall set forth the services performed by the Construction Manager and the total amount of partial payment requested. The Construction Manager shall submit one original and two copies of each requisition for payment, which requisition shall consist of not less than that required under this Agreement in a form of requisition acceptable to the Director and verified by the Construction Manager, with an affidavit and waiver of lien by each Subcontractor to be paid pursuant to the requisition and by the Construction Manager, with verified payroll reports from each Subcontractor and from the Construction Manager, and with those regulatory documents pertinent to the Work for the period, such as waste manifests. The total amount of partial payment requested shall be broken down into the following categories, to the extent the category applies to the payment period: (1) Fee for Profit; (2) Construction Work; (3) Staffing Expenses; (4) Miscellaneous Expenses, and (5) Additional Services. Requisitions for payment shall be accompanied by the documentation set forth below.

- (a) Project Progress Report: The Construction Manager shall submit a current report indicating (1) the percentage of completion of all required Work for the Project, and (2) the services the Construction Manager was directed to provide during the payment period.
- (b) Construction Work: For any period for which the Construction Manager is requesting payment for construction Work, the Construction Manager shall submit the documentation set forth below and any additional documentation required by the Director:
 - (1) Current report indicating: (1) the name and type of construction Work performed by each first tier Subcontractor, and (2) the percentage of completion of all required construction Work under that subcontract. A first tier Subcontractor shall mean a Subcontractor directly engaged by the Construction Manager.
 - (2) Certified copies of payroll reports for all Subcontractors of whatever tier which have performed construction Work for the Project.
- (c) Staffing Expenses: For any period for which the Construction Manager is requesting payment for staffing expenses for an Assigned Employee, the Construction Manager shall submit the documentation set forth below:
 - (1) Assigned Employee's name and title.
 - (2) Director approval of the Assigned Employee, either approved Staffing Plan or documentation approving the Assigned Employee as a replacement.
 - (3) Assigned Employee's direct salary rate determined and approved by the Director and included in the Staffing Plan;
 - (4) Number of hours worked each day by the Assigned Employee for the week(s) in question. The number of hours per day shall be broken down to indicate the number of regular

- business hours and the number of non-regular business hours. The Multiplier shall not apply to any increase in the Assigned Employee's Direct Salary Rate per hour for authorized services performed during other than regular business hours.
- (5) Detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during the employee performed services for this Project; (2) actual hours during which the employee performed services for other projects, and (3) non-billable hours, as defined above.
 - (6) Copy of the Construction Manager's payroll register for the week(s) in question reflecting the amount actually paid by the Construction Manager to the Assigned Employee for that week.
 - (7) If applicable, copy of the Director's approval of the Construction Manager's policy regarding payment of a premium for services performed during other than regular business hours.
- (d) Miscellaneous Expenses: For any period for which the Construction Manager is requesting reimbursement for expenses incurred for miscellaneous items, the Construction Manager shall submit: (1) a report describing the miscellaneous items the Construction Manager was directed to provide, and (2) receipted bills or any other data required by the Director.
- (e) Additional Services: For any period for which the Construction Manager is requesting reimbursement for expenses incurred for additional services, the Construction Manager shall submit: (1) a report describing the additional services the Construction Manager was directed to provide, and (2) receipted bills or any other data required by the Director.

42.7.3 All payments hereunder are contingent upon the Construction Manager's satisfactory performance of the required services. The Director is authorized to make deductions for any Work performed hereunder which he/she determines to be unsatisfactory.

42.7.4 Following the receipt of a satisfactory requisition for payment, the Director's Representative will prepare, and the Director will approve, a voucher in the amount certified for partial payment, less any and all deductions authorized to be made by the Director under any terms of this Agreement or by law. This voucher will thereupon be filed with the Comptroller, with a copy thereof available to the Construction Manager if requested.

ARTICLE 43 - PROMPT PAYMENT

43.1 The Prompt Payment provisions of the relevant statute shall apply to payments hereunder. The provisions require the payment to contractors of interest on payments made after the required payment date, except as otherwise provided. The Construction Manager must submit a proper invoice to receive payment, except where the Agreement provides that the Construction Manager will be paid at predetermined intervals without having to submit an invoice for each scheduled payment. Determination of interest due will be made in accordance with the statutory provisions. If the Construction Manager is paid interest, the proportionate share of that interest shall be forwarded by the Construction Manager to its Subcontractor(s).

43.2 The Construction Manager shall pay each Subcontractor (including a materials supplier) not later than seven (7) days after receipt of payment out of amounts paid to the Construction Manager by CUCF for work performed by the Subcontractor or supplier under this Agreement.

ARTICLE 44 - ACCEPTANCE OF FINAL PAYMENT

44.1 The acceptance by the Construction Manager, or by anyone claiming by or through it, of final payment, whether such payment be made pursuant to any judgment of any Court, or otherwise, shall constitute and operate as a release to CUCF from any and all claims of and liability to the Construction Manager for anything heretofore done or

furnished for the Construction Manager relating to or arising out of this Agreement and the Work done hereunder, and for any prior act, neglect or default on the part of CUCF or any of its officers, agents or employees, excepting only a claim against CUCF for the amounts deducted or retained in accordance with the terms and provisions of this Agreement by law, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures which are contained in the verified statement filed with the Construction Manager's substantial and final requisitions pursuant to Article 42.

44.2 The Construction Manager is warned that the execution by it of a release, in connection with the acceptance of any final payment, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this Article, or those for amounts deducted by the Director from the final requisition or by the Comptroller from the final payment as certified by the Director's Representative and approved by the Director, shall not be effective to reserve such claims, anything stated to the Construction Manager orally or in writing by any officer, agent or employee of CUCF to the contrary notwithstanding.

44.3 Should the Construction Manager refuse to accept any final payment as tendered by CUCF, it shall constitute a waiver of any right to interest thereon.

44.4 The Construction Manager, however, shall not be barred from commencing an action for breach of contract under this provision to the extent permitted by Law and by the terms of the Agreement provided that a detailed and verified statement of claim is served upon the Office of the General Counsel to CUNY at 535 East 80th Street, New York, New York, 10075, not later than forty (40) days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

44.5 The provisions of this Article 44 shall apply to final payment(s) for work performed pursuant to subcontracts hereunder.

ARTICLE 45 - RIGHTS OF DIRECTOR TO POSTPONE

45.1 The Director shall have the right, upon no fewer than ten (10) days prior written notice to the Construction Manager, from time to time to postpone, delay, or suspend all or any portion of the services to be performed by the Construction Manager under this Agreement, or any additions thereto or modifications thereof, at any time and for any reason deemed to be in CUCF's interest. With respect to any postponement, delay, and suspension, the Construction Manager shall be entitled only and exclusively to an extension of time, day for day, to cover the duration of the relevant period. Such postponement, delay, or suspension shall not give rise to any cause of action for damages or extra remuneration against CUCF, other than that provided for herein.

ARTICLE 46 – TERMINATION FOR CONVENIENCE

46.1 CUCF may terminate this Agreement in its best interest or for its convenience by giving written notice to the Construction Manager in which CUCF specifies the termination date, which date shall be no sooner than seven (7) days after the date such notice is given. Upon receipt of such notice, the Construction Manager promptly shall take the following actions:

- (a) notwithstanding the generality of the foregoing, Stop Work promptly on the date specified in the notice, and on and after that date, take no action which will increase the amounts payable by CUCF under this Agreement; and
 - (b) take such action as may be necessary for the protection and preservation of CUCF's materials and property; and
 - (c) cancel all cancelable orders for material and equipment; and
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(d) assign to CUCF and deliver to the Site or any other location designated by the Director, any non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement, and has been specifically fabricated for the sole purpose of this Agreement and not incorporated in the Work.

46.2 Within ninety (90) calendar days after the date of such termination, the Construction Manager shall submit a final requisition for payment and report made by a certified public accountant or a licensed public accountant, and CUCF shall compensate the Construction Manager for that portion of the performance, including reimbursements, and Extra Work satisfactorily performed prior and up to such termination date. Such amount shall be fixed by CUCF, after consultation with the Construction Manager, and shall be subject to audit by the Comptroller. In the event the Director terminates the Construction Manager's services prior to commencement of the construction phase, the Construction Manager shall be entitled to payment of not more than ten percent (10%) of the Fee for Profit; such payment shall be determined by the Director, based on the estimated cost of construction. Termination under this Article shall not give rise to any claim against CUCF, CUNY, the City, the State or DASNY or any combination of them for damages or for compensation in addition to or in excess of that provided hereunder, all of which claims the Construction Manager hereby waives and deems discharged by CUCF's payment required by this Article.

ARTICLE 47 – DEFAULT, CURE AND TERMINATION FOR CAUSE

47.1 Without limiting the events that may constitute a default by the Construction Manager, the Construction Manager agrees that it shall be in default at any time it:

(a) fails to perform its rights and obligations to the reasonable satisfaction of CUCF or supply the skill, labor, materials, equipment, supervision or other things reasonably required of it to perform any of them pursuant to the applicable standard of professional care in quantities or for durations or of the quality to perform them with the professional skill, conformity, promptness, and diligence also required hereunder;

(b) causes interference, stoppage, or delay to the Project or to an activity necessary to complete the Project;

(c) files a petition under the United States Bankruptcy Code, is adjudged bankrupt, makes a general assignment for the benefit of creditors, becomes insolvent, or becomes subject to a receivership;

(d) fails to make payment properly and promptly for all labor, materials, and services provided in the performance of the Construction Manager's rights and obligations by it or by any of its Subcontractors;

(e) fails to perform promptly and timely any of its material rights and obligations;

(f) certifies or files a document that is found to be intentionally false or incomplete, including, without limitation, any document filed by the Construction Manager with the Department of Tax and Finance of the State of New York and any disclosure by the Construction Manager with regard to any non-responsibility determination within the five (5) year term preceding the date of the Agreement, which is based on: (A) impermissible contact or other violation of the State of New York State Finance Law §139-j, or (B) the intentional provision of false or incomplete information to a governmental entity; or

(g) fails in CUCF's reasoned judgment in the performance or observance of any of the covenants, conditions, or other terms of this Agreement.

47.2 In every event of default by the Construction Manager, in addition to every other right or remedy otherwise provided by this Agreement or by law or by equity, or by any combination of them, after giving the Construction Manager written notice of default and no shorter a period than of five (5) business days within which to cure said

default, except in any event the claimed breach affects the public health or safety, then any duration that CUCF deems sufficient, CUCF shall have the right to exercise any and every remedy available to it, in any combination, including without limitation, the following:

(a) require that Construction Manager, at no expense to CUCF, perform its rights and obligations outside its ordinary hours of business, including performing its rights and obligations on Saturdays, Sundays, holidays, and in excess of eight (8) hours a day and of forty (40) hours a week and during additional shifts as necessary to overcome the consequences of any delay attributable to the Construction Manager's uncured default: or

(b) attempt to remedy the uncured default on behalf of the Construction Manager by whatever means CUCF may deem necessary or appropriate, including, without limitation, correcting, furnishing, performing, or otherwise completing whatever is necessary to effect such a remedy, or any part thereof, by itself or through others, utilizing where appropriate any agreements with any Subcontractors for the relevant portion of performance, and, without limiting or diminishing any other remedy available to CUCF, deducting the cost thereof from any monies due or to become due to the Construction Manager under any agreement between the Construction Manager and CUCF.

47.3 After giving the Construction Manager written notice of no fewer than an additional forty-eight (48) hours within which to cure a default (at any time following the expiration of an initial notice-and-cure period) and the Construction Manager fails to cure within such additional period, excepting only the filing of bankruptcy and then only with leave of the bankruptcy court, CUCF may terminate this Agreement in writing, as of the date set forth in such writing, in whole or part, without thereby waiving or releasing or suspending or diminishing any right or remedy against the Construction Manager or against any sureties, and by itself or through others commence and complete performance of the Agreement or any portion thereof, and take over for CUCF's sole and unencumbered benefit any or all or any combination of the contracts, purchase orders, subcontracts, and materials of the Construction Manager relating to the Agreement or the Project, all of which the Construction Manager hereby transfers, assigns and sets over to CUCF upon termination for and until the completion of the Agreement and securing CUCF the payment of its costs and other damages under the Agreement, and for the breach thereof; it being intended that, for the stated purposes, CUCF shall be the assignee of and have a security interest in the property described above to the extent related to the Agreement or the Project.

47.4 In addition, at any time after CUCF terminates this Agreement, CUCF may recover from the Construction Manager all costs, losses, damages, penalties and fines, whether actual or liquidated, direct or indirect or special or consequential, and all reasonable attorneys' fees and other sums related to CUCF's enforcement against the Construction Manager of its rights under this Agreement, suffered or incurred by CUCF in relation to the Construction Manager's uncured default.

47.5 In case of termination for cause of this Agreement in whole or part, the Construction Manager shall not be entitled to receive any further payment under this Agreement, except as provided herein. The Construction Manager shall not be entitled to receive any such further payment until the Agreement shall be completed wholly to the reasonable satisfaction of CUCF, at which time, if any unpaid balance of the Fee for Profit, as adjusted by compensation for Extra Work and determined by CUCF as of the date of the Construction Manager's default, shall exceed the costs and expenses incurred by CUCF in completing the Agreement and curing the Construction Manager's default, such excess shall be paid to the Construction Manager. CUCF's costs and expenses shall include the cost of completing the Agreement to its satisfaction and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, and all losses, damages, reasonable costs and expenses, whether direct or indirect or special or consequential, including, without limitation, reasonable attorneys' and legal fees and disbursements, sustained, incurred or suffered or to be sustained, incurred or suffered by CUCF in relation to any default by the Construction Manager. From time to time during the course of CUCF's completion of the Agreement or such part thereof or at any time thereafter, CUCF shall certify to the amount of the expense incurred by CUCF in the completion of the Agreement or such part thereof, and such certificate shall be final and conclusive upon the Construction Manager and admissible as evidence against the Construction Manager in any litigation arising or growing out of this Agreement and in relation to any other agreement between the Construction Manager and CUCF.

47.6 CUCF's remedies shall be considered separate and cumulative, and shall be in addition to every other remedy given hereunder, now, or hereafter existing at law or in equity.

47.7 Additional Requirements upon Termination. Upon termination, Construction Manager shall:

(a) turn over to CUCF all documents, reports, and materials, and equipment of any nature specifically relating to this Agreement or this Project, which may use the same at its sole discretion without additional payment to Construction Manager; and

(b) upon receipt of such notice, take the following actions and complete them within forty-eight (48) hours of the date specified in the notice:

(1) notwithstanding the generality of the foregoing, Stop Work promptly on the date specified in the notice and on and after that date take no action which will increase the amounts payable by CUCF under this Agreement.; and

(2) take such action as may be necessary for the protection and preservation of CUCF's materials and property; and

(3) cancel all cancelable orders for material and equipment; and

(4) assign to CUCF and deliver to the Site or any other location designated by the Director, any non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement, and has been specifically fabricated for the sole purpose of this Agreement and not incorporated in the Work.

47.8 Where the Contractor or a sub-contractor fails to perform, is defaulted or terminated, and there is no surety, or after a demand has been made, the surety fails to perform its obligations in a timely manner, completion of the required work may be done through a contract with another vendor in as expeditious and competitive a manner as practicable. The defaulted/terminated Contractor, subcontractor and/or surety, as applicable, will be liable for any additional costs and expenses arising out of or related to the completion of the work, including without limitation, any administrative costs and the cost of any required corrective work. Subcontractor(s) proposed for the completion of the subject work are subject to the approval of CUCF.

ARTICLE 48 - CLAIMS AND ACTIONS THEREON

48.1 No claim by the Construction Manager or any of its Subcontractors or suppliers against CUCF for damages for breach of contract or compensation for Extra Work shall be made or asserted in any action or proceeding at law or in equity, unless the Construction Manager shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

48.2 No action or proceeding shall be instituted or maintained on any claims unless such action or proceeding be commenced within six (6) months after the date of the filing of the final payment voucher pursuant to this Agreement; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Agreement or by law, must be commenced within six (6) months after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and, further, except that an action or proceeding on a claim based upon the Director's exercise of the right to terminate this Agreement for cause must be commenced within six (6) months after the date on which CUCF terminates this Agreement for cause.

ARTICLE 49 - SUPPLIES, LABOR, SERVICES, MATERIALS AND TAX EXEMPTION

49.1 CUCF is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to CUCF pursuant to the provisions of this Agreement. These taxes are not to be included in requests for payment. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Construction Manager or a Subcontractor, or to supplies and materials which, even though consumed, are not incorporated into the completed Work (consumable supplies), and the Construction Manager 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 and upon all such unincorporated supplies and materials, which it may include in the relevant requisition for payment.

49.2 The Construction Manager and its Subcontractors agree to sell and CUCF agrees to purchase all supplies and materials, other than consumable supplies, required, necessary or proper for or incidental to the construction of the Project covered by this Agreement. The sum paid under this Agreement for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials herein.

49.3 The purchase by the Construction Manager through its Subcontractors of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or New York City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by the Construction Manager to CUCF is exempt from the aforesaid sales or compensating use taxes. With respect to such supplies and materials, the Construction Manager, at the request of CUCF, shall furnish to CUCF such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to CUCF title to such supplies and materials, free of liens or encumbrances, and the Construction Manager shall mark or otherwise identify all such materials as the property of CUCF.

49.4 Ownership of all materials to be sold by the Construction Manager to CUCF pursuant to the provisions of the Agreement shall immediately vest in and become the sole property of CUCF upon delivery of such supplies and materials to the Site and prior to its becoming a part of the permanent structure. Notwithstanding such transfer of ownership, the Construction Manager shall have the full and continuing responsibility to install such materials and supplies in accordance with the provisions of this Agreement, protect them, maintain them in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without cost to CUCF, until such time as the Work covered by the Agreement is fully accepted by CUCF. Such transfer of ownership shall affect in no way any of the Construction Manager's obligations hereunder. In the event that, after CUCF takes ownership, any of such supplies and materials is rejected as being defective or otherwise unsatisfactory, ownership of all such supplies and materials shall be deemed to have been transferred to the Construction Manager.

49.5 The purchase by Subcontractors of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale to the Construction Manager (either directly or through other Subcontractors) and therefore not subject to the aforesaid Sales or Compensating Use Taxes, provided that the subcontract agreements provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are in a form similar to this Agreement with respect to the separation of the sale of materials from the Work and labor, services, consumable supplies and any other matters to be provided, and provided further that the subcontract agreements provide separate prices for (1) materials and (2) all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other Work and labor and other things to be provided.

49.6 The Construction Manager and its Subcontractors and materialmen shall obtain any and all necessary Construction Manager Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a Construction Manager Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the Work covered by this Agreement.

49.7 In the event any of the provisions of this Article 49 shall be deemed to be in conflict with any other provisions of this Agreement or create any ambiguity, then the provision of this Article shall control.

ARTICLE 50 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

50.1 No claim whatsoever shall be made by the Construction Manager against any officer, agent, or employee of CUCF for, or on account of, anything done or omitted to be done in connection with this Agreement.

50.2 The Construction Manager shall require each Subcontractor or consultant to agree in its subcontract not to make any claim against CUCF, its officers, agents or employees, by reason of such subcontract, or any acts or omissions of the Construction Manager; provided however, such restrictions shall not apply to (a) demands filed by Subcontractors pursuant to Article 10.6 hereof, or (b) disputes submitted by Subcontractors pursuant to dispute resolution provisions contained in the subcontract, as described in Article 10.2.2 (g) hereof.

ARTICLE 51 - RESERVED

ARTICLE 52 - PARTICIPATION IN AN INTERNATIONAL BOYCOTT

52.1 The Construction Manager agrees that neither the Construction Manager nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

52.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Construction Manager or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this Agreement.

52.3 The Construction Manager shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of CUCF and the rules and regulations issued by the Comptroller thereunder.

ARTICLE 53 - INVESTIGATIONS

53.1 The parties to this agreement agree to cooperate at all times fully and faithfully with all investigations, audits or inquiries conducted by any State of New York (State) or City of New York (City) governmental agency or any public benefit corporation, authority, commission, interstate entity or other entity that performs a governmental or quasi-governmental function and that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by any Inspector General of a governmental agency that has an interest in the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry (with the State, City and each governmental entity and office to which this provision pertains, a "Public Entity").

53.1.1 If any person, who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding, refuses to testify before a grand jury or other Public Entity concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with any Public Entity, or;

53.1.2 If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a Public Entity seeking testimony concerning the award of, or performance under, any transaction, agreement, lease permit, contract, or license entered into with any Public Entity; then

53.1.3 The Director shall convene a hearing, upon no fewer than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify; and

53.1.4 If any non-governmental party to the hearing requests an adjournment, the Director may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Article 53.3 herein without CUCF incurring any penalty or damages for delay or otherwise.

53.2 The consequences which may attach with a final determination by the Director may include but shall not exceed:

53.2.1 For a specified period not to exceed five (5) years from the date of an adverse determination, the disqualification of any person, and any enterprise of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from CUCF; and/or

53.2.2 The cancellation or termination of any and all existing CUCF contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without CUCF incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by CUCF.

53.3 In reaching a determination and in assessing an appropriate penalty, the Director shall consider and address the factors referred to in Articles 53.3.1 and 53.3.2 herein. The Director may also consider, if relevant and appropriate, the criteria referred to in Articles 53.3.3 and 53.3.4 herein, in addition to any other information which may be relevant and appropriate;

53.3.1 A party's good faith endeavors, or lack thereof, to cooperate at all times fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

53.3.2 The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the enterprise and/or the degree of authority and responsibility the person had and has within the enterprise.

53.3.3 The nexus of the testimony sought to the subject enterprise and its contracts, leases, permits or licenses with CUCF.

53.3.4 The effect any consequence may have on an unaffiliated and unrelated party or entity that has a significant interest in an enterprise subject to the consequences referred to in Article 53.2 herein, provided that the party or enterprise has given actual notice to the Director upon the acquisition of the interest, or at the hearing called for in Article 53.1.3 herein, gives notice and proves that such interest was previously acquired. Under either circumstance, the party or enterprise must present evidence at the hearing demonstrating the potential adverse impact a consequence will have on such person or enterprise.

53.4 Definitions Used in this Article

53.4.1 The terms "license" and "permit" as used in this Article 53 shall be any license, permit, franchise, or concession not granted as a matter of right.

53.4.2 The term "person" as used in this Article 53 shall be any natural person doing business alone or

associated with another person or enterprise as a partner, director, officer, principal, or employee.

53.4.3 The term "enterprise" as used in this Article 53 shall be any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through CUCF or otherwise transacts business with CUCF.

53.4.4 The term "member" as used in this Article 53 shall any person associated with another person or enterprise as a partner, director, officer, principal, or employee.

ARTICLE 54 - ALL PRIOR WRITTEN OR ORAL AGREEMENTS EXCLUDED

54.1 The Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 55 - HEADINGS NOT BINDING

55.1 Article, Section and Chapter headings and the Table of Contents are inserted for convenience only and are not to be considered in the construction or interpretation of any provision hereof.

ARTICLE 56 - ERRORS

56.1 If this Agreement contains any error, inconsistency, ambiguity or discrepancy, including, without limitation, typographical errors, the Construction Manager shall request a clarification of same by writing to the Director, whose decision shall be binding on the parties.

ARTICLE 57 - UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

57.1 If this Agreement is found by a court of competent jurisdiction to contain any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall be deemed stricken from the Agreement without affecting the binding force of the remainder.

ARTICLE 58 - ALL LEGAL PROVISIONS DEEMED INCLUDED

58.1 It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall and is inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

ARTICLE 59 – WAIVER AND SUSPENSION

59.1 Waiver or tolerance by CUCF of a breach of any provision of this Agreement shall not be deemed to be a waiver or basis for tolerance of any other or subsequent breach, and shall not be construed to be a modification of the terms of the Agreement, unless and until the same be agreed to in writing by the Director. The conduct of CUCF and that of its employees or agents shall not suspend any material term of this Agreement.

ARTICLE 60 - ALL DEFENSES RESERVED

60.1 Each and every defense, right and remedy that CUCF has under this Agreement is not exclusive, and each is in addition to and concurrent with all other defenses, right and remedies which CUCF has under this Agreement and which

CUCF otherwise has, will have, or may have under law, equity, or otherwise.

ARTICLE 61 - CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

61.1 This Agreement shall be deemed to be executed in The City of New York, State of New York, regardless of the domicile of the Construction Manager, and shall be governed by and construed in accordance with the laws of the State of New York, without application of its choice of law principles.

61.2 The parties agree that any and all claims asserted by or against CUCF arising under this Agreement or related thereto shall be resolved pursuant to the terms of this Agreement and, thereafter, shall be heard and determined either in the courts of the United States located in New York City or in the courts of the State of New York located in the County of New York.

ARTICLE 62 - SERVICES OF NOTICES

62.1 The Construction Manager hereby designates the business address on the initial page of this Agreement as the place where all notices, directions or other communications to the Construction Manager may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction, or communication to the aforesaid place or deposit of the same in a postpaid wrapper addressed thereto in any post office box regularly maintained by the United States Post Office shall be conclusively deemed to be sufficient service thereof upon the Construction Manager as of the date of such delivery or deposit.

62.2 Such address may be changed at any time by an instrument in writing executed and acknowledged by the Construction Manager and delivered to the Director.

62.3 Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Construction Manager personally, or, if the Construction Manager is a corporation, upon any officer or director thereof.

62.3 CUCF hereby designates the following as its addresses for the service of any notice pursuant to this Agreement:

CUNY
Department of Design, Construction and Management
555 West 57th Street, 10th Floor
New York, New York 10019
Attention: Robert Lemieux, Executive Director

and a copy must be sent to:

CUNY
Department of Design, Construction and Management
555 West 57th Street, 11th Floor
New York, New York 10019
Attention: Jeffrey Weinstein, Director of Procurement Services

and to

Office of the General Counsel
CUNY
535 East 80th Street
New York, New York 10075

ARTICLE 63 - MODIFICATION

63.1 In addition to the authority of the Director to order Extra Work pursuant to Article 26 hereof or omit certain Work pursuant to Article 33 hereof, this Agreement may be modified from time to time in a writing signed by both parties in order to carry out and complete more fully and perfectly the Work agreed to be performed under this Agreement. In the event any funding for this project is provided by the City of New York, such modification shall not exceed the cost limitation approved by the New York City Office of Management and Budget.

ARTICLE 64 - MacBRIDE PRINCIPLES PROVISIONS

64.1 Notice to all Prospective Construction Managers performing any service related to a community college of The City University of New York: Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code. The local law provides for certain restrictions on certain contracts to express the opposition of the people of The City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of work place opportunity.

64.2 Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business operations in Northern Ireland conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

64.3 Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of CUCF that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

64.4 In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

64.5 In accordance with section 6-115.1 of the Administrative Code, the Construction Manager stipulates that such Construction Manager and any individual or legal entity in which the Construction Manager holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Construction Manager either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

64.6 For purposes of this section, the following terms shall have the following meanings: "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of work place opportunity which require employers doing business in Northern Ireland to:

- 64.6.1 increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical, and technical jobs;
- 64.6.2 take steps to promote adequate security for the protection of employees from under represented

- religious groups both at the work place and while traveling to and from work;
- 64.6.3 ban provocative religious or political emblems from the work place;
- 64.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
- 64.6.5 establish layoff, recall, and termination procedures which do not in practice favor a particular religious group;
- 64.6.6 abolish all job reservations, apprenticeship restrictions, and different employment criteria which discriminate on the basis of religion;
- 64.6.7 develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- 64.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- 64.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

64.7 The Construction Manager agrees that the covenants and representations in Article 64.5 above are material conditions to this Agreement. In the event the contracting entity receives information that the Construction Manager who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Construction Manager an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Construction Manager in default and/or terminate this Agreement for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Construction Manager shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Construction Manager, the difference between the Agreement's price for the uncompleted portion of this Agreement and the cost to the contracting entity of completing performance of this Agreement either itself or by engaging another contractor or contractors. In the case of a requirement contract, the Construction Manager shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Construction Manager in partial or total default in accordance with the default provisions of this Agreement, and/or may seek debarment or suspension of the Construction Manager. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this Agreement or by operation of law.

ARTICLE 65 – ULTRA LOW SULFUR DIESEL FUEL

Ultra Low Sulfur Diesel Fuel: In accordance with the provision of Section 24-163.3 of the New York City Administrative Code, the Construction Manager specifically agrees as follows:

I. Definitions: For the purpose of this Article, the following definitions apply:

A. "Construction Manager" means any person or entity that enters into a Public Works Contract with a City agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such Public Works Contract.

B. "Lower Manhattan" means the area of New York County consisting of the area to the south of and within Fourteenth Street.

C. "Motor Vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

D. “Nonroad Engine” means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

E. “Nonroad Vehicle” means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

F. “Public Works Contract” means a contract with a City agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a City agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a City agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

G. “Ultra Low Sulfur Diesel Fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.

II. Ultra Low Sulfur Diesel Fuel

A. All Construction Managers shall use Ultra Low Sulfur Diesel Fuel in diesel-powered Nonroad Vehicles in the performance of this Agreement.

B. Notwithstanding the requirements of paragraph A, Construction Managers may use diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of this Part II, where the Director of the New York City Department of Environmental Protection (“DEP Director”) has issued a determination that a sufficient quantity of Ultra Low Sulfur Diesel Fuel is not available to meet the needs of City agencies and Construction Managers. Any determination made pursuant to this subdivision shall expire after six months unless renewed.

C. Construction Managers shall not be required to comply with this Part II where the agency letting this contract makes a written finding, which is approved, in writing, by the DEP Director, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million is not available to meet the requirements of Section 24-163.3 of the Administrative Code, provided that such Construction Manager in its fulfillment of the requirements of this Agreement, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of this Part II shall be in full force and effect unless the agency renews the finding in writing and such renewal is approved by the DEP Director.

D. Construction Managers may check on determinations and approvals issued by the DEP Director pursuant to Section 24-163.3 of the Administrative Code, if any, at www.nyc.gov/dep or by contacting the Department issuing this solicitation.

E. The requirements of this Part II do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

F. The requirements of this Part II do not apply to Public Works Contracts entered into or renewed prior to June 19, 2004.

III. BEST AVAILABLE TECHNOLOGY

A. All Construction Managers shall utilize the best available technology for reducing the emission of pollutants for diesel-powered Nonroad Vehicles in the performance of this Agreement. For determinations of best available technology for each type of diesel-powered Nonroad Vehicle, Construction Managers shall comply with the regulations of City Department of Environmental Protection, as and when adopted, Chapter 14 of Title 15 of the Rules of City of New York (RCNY). The Construction Manager shall fully document all steps in the best available technology selection process and shall furnish such documentation to the Department or the DEP Director upon request. The Construction Manager shall retain all documentation generated in the best available technology selection process for as long as the selected best available technology is in use.

B. No Construction Manager shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered Nonroad Vehicle in accordance with the provisions of this Part III within three years of having first utilized such technology for such vehicle.

C. This Part III shall not apply to any vehicle used to satisfy the requirements of a specific Public Works Contract for fewer than twenty calendar days.

D. The Construction Manager shall not be required to comply with this Part III with respect to a diesel-powered Nonroad Vehicle under the following circumstances:

1. Where the agency makes a written finding, which is approved, in writing, by the DEP Director, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, Construction Manager shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.
2. Where the DEP Director has issued a written waiver based upon the Construction Manager having demonstrated to the DEP Director that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, Construction Manager shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.
3. In determining which technology to use for the purposes of subsections (D) (1) and (D) (2) above, Construction Manager shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.
4. Construction Managers shall submit requests for a finding or a waiver pursuant to this subsection (D) in writing to the DEP Director, with a copy to the Contracting Officer of the Department issuing the solicitation. Any finding or waiver made or issued pursuant to subsections (D) (1) and (D) (2) above shall expire after one hundred eighty days, at which time the requirements of subsection A shall be in full force and effect unless the agency renews the finding, in writing, and the DEP Director approves such finding, in writing, or the DEP Director renews the waiver, in writing.

E. The requirements of this Part III do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

IV. Section 24-163 of the Administrative Code. Construction Managers shall comply with Section 24-163 of the New York City Administrative Code related to the idling of the engines of motor vehicles while parking.

V. COMPLIANCE

A. Construction Manager’s compliance with these provisions may be independently monitored. If it is determined that the Construction Manager has failed to comply with any provision of this rider, any costs associated with any independent monitoring incurred by CUCF shall be reimbursed by the Construction Manager.

B. Any Construction Manager who violates any provision of this Article, except as provided in subsection (C) below, shall be liable for a civil penalty between the amounts of one thousand and ten thousand dollars, in addition to twice the amount of money saved by such Construction Manager for failure to comply with this Article.

C. No Construction Manager shall make a false claim with respect to the provisions of this Article to a City agency. Where a Construction Manager has been found to have done so, such Construction Manager shall be liable for a civil penalty of twenty thousand dollars, in addition to twice the amount of money saved by such Construction Manager in association with having made such false claim.

VI. REPORTING

A. For all Public Works Contracts covered by this Article, the Construction Manager shall report to the Department the following information:

1. The total number of diesel-powered Nonroad Vehicles used to fulfill the requirements of this Public Works Contract;
2. The number of such Nonroad Vehicles that were powered by Ultra Low Sulfur Diesel Fuel;
3. The number of such Nonroad Vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology;
4. The number of such Nonroad Vehicles that utilized such other authorized technology in accordance with Part III, including a breakdown by vehicle model and the type of technology used for each such vehicle;
5. The locations where such Nonroad Vehicles were used; and
6. Where a determination is in effect pursuant to Part II.B or II.C, detailed information concerning the Construction Manager’s efforts to obtain Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million.

B. The Construction Manager shall submit the information required by Paragraph A at the completion of work under the Public Works Contract and on a yearly basis no later than August 1 throughout the term of the Public Works Contract. The yearly report shall cover work performed the preceding fiscal year (July 1- June 30).

ARTICLE 66 – ULTRA LOW SULFUR DIESEL FUEL **COORDINATED CONSTRUCTION ACT FOR LOWER MANHATTAN**

In accordance with the Coordinated Construction Act for Lower Manhattan, as amended:

I. DEFINITIONS: For purposes of this Article, the following definitions apply:

A. “Lower Manhattan” means the area to the south of and within the following lines: a line beginning at a point where the United States pierhead line in the Hudson river as it exists now or may be extended would intersect with the southerly line of West Houston street in the borough of Manhattan extended, thence easterly along the southerly side of West Houston street to the southerly side of Houston street, thence easterly along the southerly side of Houston street to the southerly side of East Houston street, thence northeasterly along the southerly side of East Houston street to the point where it would intersect with the United States pierhead line in the East river as it exists now or may be extended, including tax lots within or immediately adjacent thereto.

B. “Lower Manhattan Redevelopment Project” means any project in Lower Manhattan that is funded in whole or in part with federal or State funding, or any project intended to improve transportation between Lower Manhattan and the two air terminals in the City of New York known as LaGuardia Airport and John F. Kennedy International Airport, or between Lower Manhattan and the air terminal in Newark known as Newark Liberty International Airport, and that is funded in whole or in part with federal funding.

C. “Nonroad Engine” means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

D. “Nonroad Vehicle” means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this terms shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

E. “Ultra Low Sulfur Diesel Fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.

II. REQUIREMENTS: Construction Managers and Subcontractors are required to use only Ultra Low Sulfur Diesel Fuel to power the diesel-powered Nonroad Vehicles with engine horsepower (HP) rating of 50 HP and above used on a Lower Manhattan Redevelopment Project and, where practicable, to reduce the emission of pollutants by retrofitting such Nonroad Vehicles with oxidation catalysts, particulate filters, or technology that achieves lowest particulate matter emissions.

ARTICLE 67 - VENDEX QUESTIONNAIRES

67.1 **Requirement:** The Construction Manager shall complete and submit completed VENDEX Questionnaires for itself before any award of contract may be made and, as to each Subcontractor, before approval is given for a proposed Subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal, disapproval of a Subcontractor, subsequent withdrawal of approval for the use of an approved Subcontractor, or the cancellation of the contract after its award.

67.2 **Submission:** VENDEX Questionnaires must be submitted directly to the Director of Procurement Services at the address set forth in Article 62. Each Subcontractor shall submit a completed Business Entity Questionnaire and each subcontractor of each Subcontractor shall submit completed subcontractor questionnaire.

67.3 **Obtaining Forms:** VENDEX Questionnaires, as well as detailed instructions, may be obtained at www.nyc.gov/vendex. The Construction Manager may also obtain VENDEX forms and instructions by contacting the CONTRACTING OFFICER or the contact person for this Agreement.

ARTICLE 68 - PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES

The Construction Manager shall meet the requirements for the participation by minority-owned and women-owned business enterprises in this Project, as set forth more fully at Exhibit G hereof.

IN WITNESS WHEREOF, the Director, on behalf of CUCF, and the Contractor, have executed this agreement in quadruplicate, three of which are to remain with the CUCF, and the fourth to be delivered to the Contractor.

City University Construction Fund:

By: _____
Executive Director

CONTRACTOR:

By: _____

Print Name: _____

Title: _____

EIN: _____

APPROVED AS TO FORM AND CERTIFIED
AS TO LEGAL AUTHORITY

_____ DATE _____
General Counsel

EXHIBIT A
CONTRACT INFORMATION

1. Total Not to Exceed Amount: \$ 15,000,000.00
(Total of the Allowances listed below)
- Allowance for Fee for Profit Staffing Expenses: \$ 4,200,000.00
- Allowance for Construction Work: \$ 10,000,000.00
- Allowance for Miscellaneous Expenses: \$ 600,000.00
- Allowance for Additional Services: \$ 200,000.00
3. Liquidated Damages: \$ 1,000.00
4. Construction Manager’s Bond Amount \$ TBD
5. Term of Agreement: The Agreement shall commence as of the date of the advice of award and shall remain in effect until Final Acceptance of all required construction work and completion of all required services for all assigned Projects. The period for completion is the number of consecutive calendar days set forth below.

1095 ccds

EXHIBIT B
PROJECT TEAM

EXHIBIT C
FEE CURVE FOR DESIGN SERVICES, FOR PROFIT AND DIRECT SALARY HOURLY RATES

EXHIBIT D
PARTIAL PAYMENT FOR STORED MATERIAL

The Director may authorize partial payment for certain materials, fixtures and equipment, prior to their incorporation in the Work, but only in strict accordance with and subject to all the terms and conditions set forth in Paragraphs 1 through 16 below. The Construction Manager may request such partial payment on behalf of its Subcontractors and suppliers.

1. The Construction Manager shall submit to the Director a written request, in quadruplicate, for payment for materials purchased or to be purchased for which it desires to be paid prior to their actual incorporation in the Work. The request shall be accompanied by a schedule of the types and quantities of materials, and shall state whether such materials are to be stored on or off the site.
 2. Where the materials are to be stored off the site, they shall be stored at a place other than the Construction Manager's or Subcontractor's premises (except with the written consent of the Director) and under the conditions prescribed or approved by the Director. The Construction Manager shall set apart and separately store at the place or places of storage all materials and shall clearly mark same "PROPERTY OF CUCF", and further, shall not at any time move any of said materials to another off-site place of storage without the prior written consent of the Director. Materials may be removed from their place of storage off the site for incorporation in the work upon approval of the Director's Representative.
 3. Where the materials are to be stored at the site, they shall be stored at such locations as shall be designated by the Director's Representative and only in such quantities as, in the opinion of the Director's Representative, will not interfere with the proper performance of the Work by the Construction Manager or by other contractors then engaged in performing work on the site. Such materials shall not be removed from their place of storage on the site except for incorporation in the Work, without the approval of the Director's Representative.
 4. INSURANCE
 - a. STORAGE OFF-SITE: Where the materials are stored off the site and until such time as they are incorporated in the Work, the Construction Manager shall fully insure such materials against any and all risks of destruction, damage, or loss including but not limited to fire, theft, and any other casualty or happening. The policy of insurance shall be payable to CUCF. It shall be in such terms and amounts as shall be approved by the Director and shall be placed with a company duly licensed to do business in the State of New York. The Construction Manager shall deliver the original and one copy of such policy or policies marked "Fully Paid" to the Director.
 - b. STORAGE ON THE SITE: Where the materials are stored at the site, the Construction Manager shall furnish satisfactory evidence to the Director that they are properly insured against loss, by endorsements or otherwise, under the policy or policies of insurance obtained by the Construction Manager to cover losses to materials owned or installed by him. The policy of insurance shall cover fire and extended coverage against windstorm, hail, explosion, and riot attending a strike, civil commotion, aircraft, vehicles, and smoke.
 - c. Subject to approval by the Director, the above-described insurance may be provided by the Construction Manager's Subcontractor.
 5. All costs, charges and expenses arising out of the storage of such materials, shall be paid by the Construction Manager and CUCF hereby reserves the right to retain out of any partial or final payment made under the Agreement an amount sufficient to cover such costs, charges and expenses with the understanding that CUCF shall have and may exercise any and all other remedies at law for the recovery of such cost, charges and expenses. There shall be no increase in the Agreement price for such costs, charges and expenses and the Construction Manager shall not make any claim or demand for compensation therefore.
 6. The Construction Manager shall pay any and all costs of handling and delivery of materials, to the place of storage and from the place of storage to the site of the work; and CUCF shall have the right to retain from any
-

- partial or final payment an amount sufficient to cover the cost of such handling and delivery.
7. In the event that the whole or any part of these materials are lost, damaged, or destroyed in advance of their satisfactory incorporation in the Work, the Construction Manager at its own cost shall replace such lost, damaged, or destroyed materials of the same character and quality. CUCF will reimburse the Construction Manager for the cost of the replaced materials to the extent, and only to the extent, of the moneys actually received by CUCF under the policies of insurance hereinbefore referred to. Until such time as the materials are replaced, CUCF will deduct from the value of the stored materials or from any other money due under the Agreement, the amount paid to the Construction Manager for such lost, damaged, or destroyed materials.
 8. Should any of the materials paid for CUCF hereunder be subsequently rejected or incorporated in the Work in a manner or by a method not in accordance with the Contract Documents, the Construction Manager shall remove and replace such defective or improperly incorporated material with materials complying with the Contract Documents. Until such materials are replaced, CUCF will deduct from the value of the stored materials or from any other money due the Construction Manager, the amount paid by CUCF for such rejected or improperly incorporated materials.
 9. Payments for the cost of materials made hereunder shall not be deemed to be an acceptance of such materials as being in accordance with the Contract Documents, and the Construction Manager always retains and must comply with his duty to deliver to the site and properly incorporate in the Work only materials which comply with the Contract Documents.
 10. The Construction Manager shall retain any and all risks in connection with the damage, destruction, or loss of the materials paid for hereunder to the time of delivery of the same to the site of the Work and their proper incorporation in the Work in accordance with the Contract Documents.
 11. The Construction Manager shall comply with all laws and the regulations of any governmental body or agency pertaining to the priority purchase, allocation, and use of the materials.
 12. When requesting payment for such materials, the Construction Manager shall submit with the partial estimate duly authenticated documents of title, such as bills of sale, invoices, or warehouse receipts, all in quadruplicate. The executed bills of sale shall transfer title to the materials from the Construction Manager to CUCF (in the event that the invoices state that the material has been purchased by a Subcontractor, bills of sale in quadruplicate will also be required transferring title to the materials from Subcontractor to the Construction Manager).
 13. Where the Construction Manager, with the approval of the Director has purchased unusually large quantities of materials in order to assure their availability for the Work, the Director at his option, may waive the requirements of paragraph "12" provided the Construction Manager furnishes evidence in the form of an affidavit of the Construction Manager in quadruplicate, and such other proof as the Director may require, that he is the sole owner of such materials and has purchased them free and clear of all liens and other encumbrances. In such event, the Construction Manager shall pay for such materials and submit proof thereof, in the same manner as provided in paragraph "12" hereof, within seven (7) days after receipt of payment therefore from the Comptroller. Failure on the part of the Construction Manager to submit satisfactory evidence that he has paid in full for all such materials shall preclude him from payments under the Agreement.
 14. The Construction Manager shall include in each succeeding partial estimate requisition a summary of materials stored which shall set forth the quantity and value of materials in storage, on or off the site, at the end of each preceding estimate period; the amount removed for incorporation in the Work; the quantity and value of materials delivered during the current period and the total value of materials on hand for which payment thereof will be included in the current payment estimate.
 15. Upon proof to the satisfaction of the Director of the actual cost of such materials and upon submission of proper proof of title as required under paragraph "12" or "13" hereof, payment will be made therefore to the extent of 85%, provided however, that the cost so verified, established and approved shall not exceed the estimated cost of such materials included in the approved detailed breakdown estimate submitted in accordance with Article 42 of the Agreement; if it does, CUCF will pay only 85% approved estimated cost.
 16. Upon the incorporation in the Work of any such materials, which have been paid for in advance of such incorporation in accordance with the foregoing provisions, payment will be made for such materials incorporated in the Work pursuant to Article 42 of the Agreement, less any sums paid pursuant to paragraph "15" herein.
-

EXHIBIT E
FORM OF BID, PERFORMANCE, AND PAYMENT BONDS

BID BOND

Bond No.: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we,

_____ ,

hereinafter referred to as the "Principal", and

_____ ,

hereinafter referred to as the "Surety", are held and firmly bound to

_____ ,

hereinafter referred to as the "CM," or to its successors, or to its assigns, in the penal sum of

Dollars (\$ _____), lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal is about to submit (or has submitted) to CM the accompanying Contract Proposal (the "Proposal" or "Bid"), hereby made a part hereof, to enter into a Contract in writing (the "Contract") for:

_____ ,

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall not withdraw said Bid without the consent of CM for a period of ninety (90) Days after the opening of bids, or any period of longer duration to which the Principal consents, and, in the event of acceptance of said Bid by CM, if the Principal shall:

- (a) within ten (10) business days after notification by CM, execute and deliver to CM all the executed counterparts of the Contract in the form set forth in the Proposal and in the number as required by CM, and
- (b) furnish within ten (10) business days after notification by CM a performance bond and separate payment bond, as may be required by CM, for the faithful performance and proper fulfillment of such Contract, which bonds shall be satisfactory in all respects to CM and shall be executed by good and sufficient sureties satisfactory in all respects to CM, and
- (c) in all respects perform the agreement created by the acceptance of said Proposal, bound herewith and made a part hereof, or if CM shall reject the aforesaid Proposal, then this obligation shall be null and void; otherwise to remain in full force and effect.

In the event that the Proposal of the Principal shall be accepted and the Contract be awarded to the Principal, the Surety hereunder agrees, subject only to the payment by the Principal of the premium therefore, if requested by CM, to write the aforementioned performance and payment bonds in the form set forth in the Contract Documents.

It is expressly understood and agreed that the liability of the Surety for any and all things hereunder shall in no event exceed the penal amount of this obligation as herein stated. In addition, it is expressly understood that any

payment received by CM pursuant to this bond is, subject to CM’s sole election, either in liquidation of damages caused by the Principal’s failure to meet timely any condition of the obligation stated herein or part payment to CM of CM’s actual damages, including, without limitation, the difference between the price bid by the Principal and the price for which the Contract shall subsequently be relet, including the cost of such reletting, incurred in relation to the failure of the Principal to meet any condition of the obligation stated herein, for which damages the Principal agrees it shall be liable.

The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall in no way be impaired or affected by any postponements of the date upon which CM will receive or open Bids, or by any extensions of the time within which CM may accept Bids, or by any waiver by CM of any of the requirements of the Contract; and the Surety hereby waives notice of any such postponements, extensions, or waivers.

IN WITNESS WHEREOF, the Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this _____ day of _____, _____.

Principal (SEAL)

By _____

Surety (SEAL)

By _____

[Acknowledgments of the Principal and Surety follow]

PERFORMANCE BOND

Bond No.: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we,

hereinafter referred to as the "Principal", and

hereinafter referred to as the "Surety", are held and firmly bound to

hereinafter referred to as the "CM," or to its successors, or to its assigns, in the penal sum of

Dollars (\$ _____), lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal is about to enter, or has entered, into a contract in writing with the CM for

_____ ("Contract")

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and/or replacement of defective Work and guarantees of maintenance for the periods stated in the Agreement, and shall fully indemnify and save harmless the CM from all cost and damage which it may suffer by reason of failure so to do, and shall fully reimburse and repay the CM for all outlay and expense which the CM may incur in making good any such default, and shall protect the said CM against, and pay any and all amounts, damages, costs and judgments which may or shall be recovered against said CM or any of its officers or agents of which the said CM may be called upon to pay any person or corporation by reason of any damages arising or growing out of the doing of said Work, or the repair or maintenance thereof, or the manner of doing the same, or the neglect of the said PRINCIPAL, or his (their, its) agents or servants, or the improper performance of the said Work by the said PRINCIPAL, or his (their, its) agents or servants, or the infringement of any patent or patent rights by reason of the use of any materials furnished or work done as aforesaid or otherwise, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, if requested to do so by the CM, to fully perform and complete the Work to be performed under the Agreement, pursuant to the terms, conditions, and covenants thereof, if the CM determines that the Principal, for any cause, has failed or neglected to fully perform and complete

such Work. The Surety (Sureties) further agrees to commence and diligently perform the Work specified in the Agreement, including physical site work, within twenty-five (25) business days after written notice thereof from the CM and to complete all Work within such time as the CM may fix. The Surety and the CM reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for delay or non-performance of its obligation to continue, to commence and to complete all Work as provided herein.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or Work to be performed thereunder, or by any payment thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any Work to be performed or any moneys due or to become due thereunder or by any assignment of this bond; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, Subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal. The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any assignment by the CM of its rights, title and interest in and to such bond, and said Surety (Sureties) hereby waives notice of any such assignment by the CM.

IN WITNESS WHEREOF, the Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this _____ day of _____, _____.

(Seal) _____(L.S.)
Principal

By: _____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

Bond Premium Rate _____

Bond Premium Cost \$_____

DIRECTIONS FOR SIGNATURES

If the Construction Manager (Principal) is a partnership, the bond must be signed by each of the individuals who are partners.

If the Construction Manager (Principal) is a corporation, the bond must be signed in its lawful corporate name by a duly authorized officer, agent, or attorney-in-fact.

There must be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Agreement.

[Acknowledgments of the Principal and Surety follow]

PAYMENT BOND

Bond No.: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we,

hereinafter referred to as the "Principal", and

hereinafter referred to as the "Surety", are held and firmly bound to

hereinafter referred to as the "CM," or to its successors, or to its assigns, in the penal sum of

_____ Dollars (\$ _____), lawful money of the United States, for the payment of

which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal is about to enter, or has entered, into a contract in writing with the CM for

_____ ("Contract")

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns and other Subcontractors to whom Work under this Contract is sublet and his or their successors and assigns shall promptly pay or cause to be paid all lawful claims for

(a) Wages and compensation for labor performed and services rendered by all persons engaged in the prosecution of the Work under said Agreement, and any amendment or extension thereof or addition thereto, whether such persons be agents servants or employees of the Principal or any such Subcontractor, including all persons so engaged who perform the work of laborers or mechanics at or in the vicinity of the site of the Project regardless of any contractual relationship between the Principal or such Subcontractors, or his or their successors or assigns, on the one hand and such laborers or mechanics on the other, but not including office employees not regularly stationed at the site of the Project; and

(b) Materials and supplies (whether incorporated in the permanent structure or not), as well as teams, fuels, oils, implements or machinery furnished, used or consumed by said Principal or any Subcontractor at or in the vicinity of the site of the Project in the prosecution of the Work under said Contract and any amendment or extension thereof or addition thereto; then this obligation shall be void, otherwise to remain in full force and effect.

This bond is subject to the following additional conditions, limitations, and agreements:

(a) The Principal and Surety (Sureties) agree that this bond shall be for the benefit of any materialmen or laborer having a just claim, as well as the CM and any assignees.

(b) All persons who have performed labor, rendered services or furnished materials and supplies, as aforesaid, shall have a direct right of action against the Principal and his, its or their successors and assigns, and the Surety (Sureties) herein, or against either or both or any of them and their successors and assigns. Such persons may sue in their own name, and may prosecute the suit to judgment and execution without the necessity of joining with any other persons as party plaintiff.

(c) The Principal and Surety (Sureties) agree that neither of them will hold the CM or any assignee liable for any judgment for costs of otherwise, obtained by either or both of them against a laborer or materialman in a suit brought by either a laborer or materialman under this bond for moneys allegedly due for performing work or furnishing material.

(d) The Surety (Sureties) or its successors and assigns shall not be liable for any compensation recoverable by an employee or laborer under the Workmen's Compensation Law.

(e) In no event shall the Surety (Sureties), or its successors or assigns, be liable for a greater sum than the penalty of this bond or be subject to any suit, action or proceeding hereon that is instituted by any person, firm, or corporation hereunder later than two years after the complete performance of said Contract and final settlement thereof.

The Principal, for himself and his successors and assigns, and the Surety (Sureties), for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of the CM to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either of them might interpose to an action brought hereon by any person, firm or corporation, including Subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed rendered, or furnished as aforesaid upon the ground that there is no law authorizing the CM to require the foregoing provisions to be placed in this bond.

And the Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties), and its bonds shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed, or any moneys due to become due thereunder or by any assignment of this bond and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, Subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done or in relation to said Principal. The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any assignment by the CM of its rights, title and interest in and to such bond, and said Surety (Sureties) hereby waives notice of any such assignment by the CM.

IN WITNESS WHEREOF, the Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this _____ day of _____, _____.

(Seal) _____(L.S.)
Principal

By: _____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

certified copy of latest published financial statement of assets and liabilities of Surety.

* * * * *

Affix Acknowledgments and Justification of Sureties.

EXHIBIT F
ASSIGNMENT OF BONDS

THIS AGREEMENT made and entered into this _____ day of _____, _____, by and between _____ (hereinafter the "CM"), located at _____, and the City University Construction Fund (hereinafter "CUCF"), with offices located at 555 West 57th Street, New York, New York 10019

WITNESSETH:

WHEREAS CUCF has entered into a certain contract with the CM, bearing Contract Registration Number _____ (hereinafter the "Contract"); and

WHEREAS pursuant to the Contract, the CM is obligated to subcontract certain work and to obtain payment and performance bonds from the Subcontractors; and

WHEREAS pursuant to the Contract, the CM has agreed to assign all its rights, title and interest under the subject bonds, in the manner set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto do hereby agree as follows:

The CM hereby makes an irrevocable assignment to CUCF of all its rights, title, and interest in and to the below described bid, performance and payment bonds, including any subrogation or other right of the CM to receive any payments that may become due and owing by the Surety thereunder:

Bid, Performance, and Payment Bonds (Bonds # _____, # _____ # _____ respectively) issued to _____, by _____, designating _____ as Obligee, with respect to a contract for _____

IN WITNESS WHEREOF, the parties hereto do set their hands and agree as follows.

CM: _____

City University Construction Fund:

By: _____

By: _____

Title: _____

Jeffrey Weinstein
Deputy Director

EXHIBIT G
M/WBE REQUIREMENTS

Requirements for the participation of M/WBEs apply to the Project. Such requirements are set forth below. Prior to commencement of the construction phase, CUCF shall provide such M/WBE requirements to the Construction Manager in a form titled “Subcontractor Utilization Plan.” The Subcontractor Utilization Plan shall be included by the Construction Manager in Bid Documents for all subcontracts for the Project. The goal of the plan for New York State approved minority business enterprise participation is seven and twenty-five hundredths percent (7.25%) of each issued Task Order’s Not to Exceed Amount, as defined in Section 6.24; the goal for New York State approved women business enterprise participation is four and seventy-five hundredths percent (4.75%) of the respective value of each issued Task Order’s Not to Exceed Amount, as defined in Section 6.24.

A. The Construction Manager shall use good faith efforts to provide for meaningful participation by Minority and Women’s Business Enterprises (MWBEs) in the work. Such good faith efforts shall include, but not be limited to, the following (with the relevant terms defined herein):

1. Soliciting bids, actively and affirmatively, for subcontracts from NYS Certified MWBEs, including circulation of solicitations to Minority and Women Contractors' Associations. The Construction Manager shall maintain records detailing the efforts made to provide for meaningful MWBE participation in the work, including the names and addresses of all MWBEs contacted and, if any such MWBE is not selected as a joint venturer or subcontractor, the reasons for such decision.

2. Advertising in newspapers or publications within reasonable proximity to the location where the Work is performed.

3. Utilizing the list of certified MWBEs maintained on the internet by Empire State Development Corporation for the purpose of soliciting bids for subcontracts and supplies.

4. Dividing the work to be subcontracted into smaller portions where technically feasible.

5. Utilizing the services and cooperating with those organizations providing technical assistance in connection with MWBE participation.

6. Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate to ensure that the Construction Manager will meet its obligations hereunder.

7. Waiving bonds from MWBEs and/or providing bonds and insurance for MWBEs, where appropriate in the Construction Manager's judgment.

8. Insuring that provision is made to provide progress payments to MWBEs on a timely basis.

9. Inserting the foregoing provisions and following definitions in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or supplier.

B. The Construction Manager shall use good faith efforts to ensure meaningful participation by minority persons and women in the work. Such good faith efforts shall include at least the following:

1. Ensuring and maintaining a working environment free of harassment, intimidation, and coercion. The Construction Manager shall specifically ensure that all supervisory personnel are aware of and carry out the Construction Manager's obligations to maintain such a working environment.

2. Establishing and maintaining a current list of minority and women recruitment sources and notifying such sources and minority community organizations when employment opportunities are available, and maintaining a record of the sources' and organizations' responses.

3. Making **specific** and reasonably recurrent, written and oral recruitment efforts, directed at minority and women's organizations, schools with substantial minority and women enrollment, and to minority and women's recruitment and training organizations within the Construction Manager's recruitment area.

4. Notifying CUCF promptly when the union or unions with which the Construction Manager has a collective bargaining agreement have not referred to the Construction Manager a minority person or woman sent by the Construction Manager to such union for employment in the work, or when it has other information that the union referral process has impeded efforts to meet its obligations.

5. Disseminating the Construction Manager's equal employment opportunity policy within its organization by including it in any employee handbook or policy manual; by publishing it in company newspapers and annual reports; and by advertising such policy at reasonable intervals in union publications. The equal employment opportunity policy should be further disseminated by conducting staff meetings to explain and discuss the policy; by posting of the policy at the site of any work and by review of the policy with employees.

6. Disseminating the Construction Manager's equal employment opportunity policy externally by informing and discussing it with all recruitment sources and community organizations; by advertising in news media, specifically including minority and women news media; and by notifying and discussing it with all subcontractors.

7. Maintaining a file of the names and addresses of each minority person and woman referred to it by any individual, recruitment source or community organization and of what action was taken with respect to each such referred individual. If the individual was not employed by the Construction Manager, the file should set forth reasons therefore.

8. Validating all tests and other selection requirements.

9. Ensuring that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect.

10. Ensuring that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

11. Monitoring continuously all personnel activities to ensure that its equal employment opportunity policy is being carried out, including the evaluation of minority and women employees for promotional opportunities on an annual basis, and the encouragement of such employees to seek those opportunities.

12. Maintaining monthly compliance reports with the Fund relating to the operation and implementation of approved affirmative action programs.

13. Inserting the foregoing provisions in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or supplier.

C. The Construction Manager shall use the following definitions pertaining to obligations hereof relating to Minority and Women's Business Enterprises (MWBE):

1. The term "Minority Business Enterprise" ("MBE") means any business enterprise which is at least 51 percent owned by, or in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by, citizens or permanent resident aliens who are Black, Hispanic, Asian or American Indian, and such ownership interest is real, substantial and continuing. The minority ownership must have and exercise the authority to independently control the business decisions of the entity.

2. The term "Women's Business Enterprise" ("WBE") means any business enterprise which is at least 51 percent owned by, or in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by, citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing. The women ownership must have and exercise the authority to independently control the business decisions of the entity.

3. The term "Minority" means: (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin; (b) Hispanic persons of Mexican, Puerto Rican, Cuban, Central or South American culture or origin, regardless of race; (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; and (d) American Indian or Alaskan Native persons having origins in any of the original peoples of North America.

EXHIBIT H

CITY UNIVERSITY CONSTRUCTION FUND

CUNY DEPARTMENT OF DESIGN, CONSTRUCTION AND MANAGEMENT

SAFETY REQUIREMENTS

I POLICY ON SITE SAFETY

CUCF and the CUNY Department of Design, Construction and Management (DDCM) are committed to a policy of injury and illness prevention and risk management for construction work that will ensure the safety and health of the workers engaged in the projects and the protection of the general public. Therefore, it is DDCM's policy that work carried out by Construction Managers on DDCM jobsites must, at a minimum, comply with applicable federal, state and city laws, rules and regulations, including without limitation:

- U. S. Department of Labor 29 Code of Federal Regulations (CFR) Part 1926 and applicable Sub-parts of Part 1910 – U.S. Occupational Safety and Health Administration (OSHA) including, but not limited to “Respiratory Protection” (29 CFR 1910.134), “Permit-Required Confined Spaces” (29 CFR 1910.146), and “Hazard Communication” (29 CFR 1910.1200);
- New York State Department of Labor Industrial Code Rule 23 – Protection in Construction, Demolition and Excavation;
- New York City Construction Codes, Title 28
- NYC Department of Transportation Title 34 Chapter 2 – Highway Rules
- New York State Department of Labor Industrial Code Rule 753
- NYC Local Law No. 113 (2005) Noise Control Code

In addition, all regulations promulgated by the NYC Department of Transportation, including requirements for Maintenance and Protection of Traffic (MPT), are applicable when contained in contract specifications. While MPT is a significant component of work in our Infrastructure Division, it does not supersede or exempt Construction Managers from complying with other applicable health and safety standards (for example, excavating and trenching standards, operation of heavy equipment and compliance with City environmental and noise regulations).

II PURPOSE

The purpose of this policy is to ensure that Construction Managers perform their work and supervise their employees in accordance with all applicable federal, state and city rules and regulations. Further, Construction Managers will be expected to minimize or eliminate jobsite and public hazard, through a planning, inspection, auditing and corrective action process. The goal is to control risks so that injuries, illnesses and accidents to contractors' employees, DDCM employees and the general public, as well as damage to city-owned and private property, are reduced to the lowest level feasible.

III. DEFINITIONS

Contracting Officer (Contracting Officer): The Contracting Officer shall mean the person delegated authority by the Director to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the CCPO.

Competent Person: As defined by OSHA, an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees or the general public, and who has authorization to take prompt corrective measures to eliminate them.

Construction Safety Auditor: A representative of the QACS Construction Safety Unit who provides inspection and assessment services to enhance health and safety on all DDCM construction projects. The activities of the Construction Safety Auditor include performing site surveys, reviewing health and safety plans, reviewing construction permits, and rendering technical advice and assistance to DDCM Resident Engineers and Project Managers.

Construction Safety Unit: A part of QACS within the Division of Technical Support that assesses contractor safety on DDCM jobsites and advises responsible parties of needed corrective actions.

Construction Superintendent (Infrastructure): A representative of the contractor responsible to oversee infrastructure construction projects. This individual must engage in sound construction practices, and is responsible to maintain a safe work site.

Construction Superintendent (Structures): As defined by the New York City Department of Buildings, a representative of the contractor responsible to oversee demolition or new construction of buildings under 15 stories. This individual must be registered and licensed by NYC-DOB, must be available to the Buildings Department at all times, must engage in sound and code-compliant construction practices, and is responsible to maintain a safe work site.

Construction Manager: For purposes of these Safety Requirements, the term “Construction Manager” shall mean any person or entity that enters into a contract for the performance of construction work on a DDCM project. The term “Construction Manager” shall include any person or entity which enters into any of the following types of contracts: (1) a prime construction contract for a specific project, (2) a prime construction contract using the Job Order Contracting System (“JOCS Contract”), and (3) a subcontract with a CM/Builder (“First Tier Subcontract”).

Director - Quality Assurance and Construction Safety (QACS): Responsible for the operations of the QACS Construction Safety Unit and the DDCM Site Safety management programs.

Job Hazard Assessment (JHA): A process of identifying site-specific hazards that may be present during construction and establishing the means and methods to reduce or eliminate those hazards.

Jobsite Safety Coordinator: A person designated by the Construction Manager to be onsite during all activities. This individual shall have received, at a minimum, the OSHA 10-hour construction safety program. Other examples of acceptable training are the 30-hour OSHA Safety and Health Standards for the Construction Industry training program (OSHA 510) or a degree/certificate in a safety and health from a college-level curriculum. This person does not necessarily have to be dedicated full-time to site safety, but must have sufficient experience and authority to undertake corrective action and must qualify to be a competent person. For certain projects, as defined in NYC Construction Codes – Title 28, this person may be required to have a Site Safety Manager’s License issued by the NYC DOB.

Qualified Person: As defined by OSHA, an individual who, by possession of a recognized degree, certificate, license or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his or her ability to solve problems relating to the subject matter, the work, or the project. Qualified Persons are required under regulation to address issues pertaining, but without limit, to fall protection, scaffold design and trenching and shoring, among others.

Resident Engineer (RE) / Construction Project Manager (CPM): Representative of the Director duly designated by the Director to be his/her representative at the site of the work. (The RE/CPM may be a third-party consultant, including a CM, retained by DDCM.)

Safety Program: Established by the Construction Manager that covers all operations of that Construction Manager and establishes the Construction Manager’s overall safety policy, regulatory compliance plan, and minimum safety standards. The Safety Program must be submitted prior to award and is subject to review and acceptance by the Construction Safety Unit.

Safety Questionnaire: Used by DDCM to evaluate Construction Manager’s current and past safety performance. It is required to be completed by all Construction Managers initially when submitting bids for Construction work, or when being pre-qualified and updated annually or as requested by the DDCM.

Site Safety Plan: A site-specific safety plan developed by the Construction Manager for a specific project. The Site Safety Plan must identify hazards associated with the project, and include specific safety precautions and training appropriate and necessary to complete the work. The Site Safety Plan must be submitted prior to award and is subject to review and acceptance by the Construction Safety Unit.

Unsafe or Unhealthy Condition: A condition that could be potentially hazardous to the health and safety of personnel or the public, and/or damaging to equipment, machinery, property or the environment.

Weekly Safety Meetings: Weekly documented jobsite safety meetings, given to all jobsite personnel by contractor, with the purpose of discussing general safety topics and job specific requirements encountered at the DDCM work site.

IV. RESPONSIBILITIES

All persons who manage, perform, and provide support for construction projects shall conduct operations in compliance with the requirements identified in this Policy and all applicable governing regulatory agency requirements and guidelines pertaining to safety in construction.

A. Resident Engineer / Construction Project Manager / Construction Manager

- Monitors the issuance of safety- related permits, approvals and drawings and maintains copies on site.
- Monitors construction-related work activities to confirm that they are conducted in accordance with DDCM policies and all applicable regulations that pertain to construction safety.
- Structures Projects: Facilitates and attends weekly safety meeting. Reviews and maintains documentation.
- Infrastructure Projects: Maintains documentation and periodically attends weekly safety meeting.
- Notifies the Construction Safety Unit and the CONTRACTING OFFICER’s Insurance and Risk Management Unit of project- related accidents and emergencies, as per construction safety protocol.
- Gathers facts related to all accidents and prepares DDCM Accident Reports.
- Notifies the Construction Safety Unit of outside regulatory agency inspections and forwards a copy of the inspection report within three days of its receipt.
- Monitors the conditions at the site for conformance with the Site Safety Plan and DDCM construction documents.
- Notifies the contractor and DDCM in the event that any condition or activity exists that is not in compliance with the Site Safety Plan, applicable federal, state or local codes or any condition that presents a potential risk of injury to the public or workers or possible damage to property.
- Notifies DDCM of any emergency condition and directs the contractor to provide such labor, materials, equipment and supervision to abate such conditions.

B. Construction Managers

- Complete a Safety Questionnaire and submit with its bid or as part of a pre-qualification package.
- Provide a Written Job Hazard Assessment (JHA) that identifies expected safety issues of the work to be performed. JHA shall be included with the Site Safety Plan submitted by the contractor.

- Submit a Site Safety Plan and Safety Program within 10 business days of notification from DDCM that it has been identified as the low bidder. The Site Safety Plan and Safety Program are subject to review and acceptance by the Construction Safety Unit prior to an award of contract. The Site Safety Plan shall be revised and updated as necessary.
- Ensure that all employees are aware of the hazards associated with the project through formal and informal training and/or other communications. Conduct and document weekly safety meetings for the duration of the project. Documentation to be provided to the RE/CPM/CM on a monthly basis.
- Name a Construction Superintendent, if required.
- Name a Job Site Safety Coordinator. The Construction Manager will be required to identify the Job Site Safety Coordinator in the Site Safety Plan.
- Comply with all mandated federal, state and local safety and health rules and regulations.
- Comply with all provisions of the Site Safety Plan.
- As part of the Site Safety Plan, prepare a site specific MPT (if not otherwise provided in the contract documents) and comply with all of its provisions.
- Conduct and document site-specific safety orientation for Construction Manager personnel to review the hazards associated with the project as identified in the Site Safety Plan and the specific safety procedures and controls that will be used to protect workers, the general public, and property. The Job Site Safety Coordinator will conduct this training prior to mobilization and provide documentation to the RE/CPM/CM.
- Provide, replace and adequately maintain at or around the project site, suitable and sufficient signage, lights, barricades and enclosures (fences, sidewalk sheds, netting, bracing, etc.).
- Report unsafe conditions or hazards to the DDCM RE/CPM/CM as soon as practical, but no more than 24 hours after discovery, and take action to remove or abate such conditions.
- Report any accident involving injuries to workers or the general public, as well as property damage, to the DDCM RE/CPM/CM within two (2) hours.
- Notify the DDCM RE/CPM/CM within two (2) hours of the start of an inspection by any regulatory agency personnel, including OSHA.
- Maintain all records pertaining to all required compliance documents and accident and injury reports.
- Respond to DDCM recommendations on safety, which shall in no way relieve the Construction Manager of its responsibilities for safety on the project. The Construction Manager has sole responsibility for safety.

V. SAFETY QUESTIONNAIRE

DDCM requires that all Construction Managers provide information regarding their current and past safety and environmental performance and programs. This will be accomplished by the use of the DDCM Safety Questionnaire. As a part of the bid submittal package, the contractor must submit a completed DDCM Safety Questionnaire listing their workers' compensation experience modification rating and OSHA Incidence Rates for the three (3) years prior to the date of the bid opening. DDCM may request a Construction Manager to update its Questionnaire at any time or to provide more detailed information. The Construction Manager must provide the requested update within 30 days.

The following criteria will be used by DDCM in reviewing the Construction Manager's responsibility, which will be based on the information provided on the questionnaire:

- Criteria 1: OSHA Injury and Illness Rates (I&IR) are no greater than the average for the industry (based on the most current Bureau of Labor Statistics data for the Construction Managers SIC code); and
 - Criteria 2: Insurance workers compensation Experience Modification Rate (EMR) equal to or less than 1.0; and
 - Criteria 3: Any willful violations issued by OSHA or NYC DOB within the last three years; and
 - Criteria 4: A fatality (worker or member of public) experienced on or near Construction Manager's worksite within the last three (3) years; and
 - Criteria 5: An unacceptable rating by QACS based on past performance on DDCM projects; and
 - Criteria 6: Construction Manager has in place an acceptable corporate safety program and its employees shall have completed all documented relative safety training; and
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Criteria 7: Construction Manager shall provide OSHA Injury Records (currently OSHA 300 Log) for the last three (3) years.

If the Construction Manager fails to meet the basic criteria listed above, the Construction Safety Unit may request, through the CONTRACTING OFFICER, more detail concerning the Construction Manager's safety experience. DDCM may request the Construction Manager to provide copies of, among other things, OSHA records, OSHA and DOB citations, EPA citations and written Safety Programs.

VI. SAFETY PROGRAM AND SITE SAFETY PLAN

The Construction Manager shall submit the following within 10 days of notification from DDCM that it has been identified as the low bidder: (1) Safety Program, and (2) Site Safety Plan. The Safety Program shall set forth the Construction Manager's overall safety policy, regulatory compliance plan, and minimum safety standard, and the Site Safety Plan shall identify hazards associated with the project, and include specific safety precautions and training appropriate and necessary to complete the work. The Safety Program and the Site Safety Plan are subject to review and acceptance by the Construction Safety Unit prior to an award of contract.

The Site Safety Plan shall apply to all Construction Manager and Subcontractor operations, and shall have at a minimum, the following elements. Each element shall be described in a separate section in the written document. It may be necessary to modify the basic format for certain unique or high-risk projects (such as tunnels or high-rise construction). The basic elements are as follows:

1. **Responsibility and Organization:** Identify the person or persons with authority and responsibility for implementing the Site Safety Plan. Provide an organization chart and define levels of authority and responsibility. Identify the Competent Person, the Construction Superintendent (if required), the Job Safety Coordinator and the Qualified Person required for this project.
 2. **Communication:** Establish a system for communicating with employees and Subcontractors on matters relating to worker and public safety and health and environmental protection, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. An emergency response notification protocol is to be established that also includes after hours contact numbers. The plan must also include provisions for weekly safety meetings held by the Job Site Safety Coordinator.
 3. **Job Hazard Assessment:** A written document submitted by the contractor, used to identify expected job hazards and public safety risks and state the specific means and methods to reduce, control or eliminate those hazards. This part of the Site Safety Plan must also include how on-going evaluations of those risks and hazards will be carried out, including plans for periodic inspections to identify unsafe conditions, work practices and public safety hazards.
 4. **Accident/Exposure Investigation:** Establish a procedure to investigate and report occupational and public injury or illness, property damage, vehicle accidents or other mishaps.
 5. **Hazard Correction:** Establish means, methods and/or procedures for correcting unsafe or unhealthy conditions that might be exposing both the public and workers to hazards. Corrective actions must be taken immediately when observed or discovered. Should an imminent hazard exist which cannot be immediately abated without endangering employees, the public and/or property, remove or restrict all exposed persons from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards. When corrective actions cannot be taken immediately, temporary measures should be taken until such time permanent measures are taken to eliminate the potential risks or hazards.
 6. **Training:** Describe site-specific hazard training programs. In addition to the required safety orientation, additional site specific training, in the form of required weekly safety meetings, will be required. Construction Managers must also initiate training when: a) new employees are hired; b) employees are given new job assignments for
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which training has not been previously received; c) new substances, processes, procedures or equipment are introduced that might represent a new public or worker hazard; d) the employee is made aware of a new or previously unrecognized hazard; e) new supervisors are assigned to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed; and f) after a jobsite incident or accident has occurred.

7. Recordkeeping: Establish procedures to maintain records of scheduled and periodic inspections, weekly safety meetings, and training records. Updated records shall be maintained at the jobsite, accessible to the Construction Safety Auditors and/or Quality Assurance Auditors/RE/CPM, and retained in accordance with DDCM policy.

The most critical component of the Site Safety Plan is the Job Hazard Assessment section. This section must address specific hazards that are anticipated throughout the project. Each Site Safety Plan must address, at a minimum:

- Public and pedestrian safety
- Fall protection
- Electrical hazards
- Scaffolding
- Fire protection
- Emergency notification & response
- Housekeeping / debris removal
- Dust control
- Maintenance and protection of traffic
- Trenching and excavating
- Heavy equipment operations
- Material / equipment storage
- Environmental contamination
- Sheeting and shoring
- Alcohol and Drug Abuse Policy

The following additional hazards must be addressed, if applicable, based on the contract safety specifications and/or the results of the JHA (the list is not all-inclusive):

- Basic Personal Protective Equipment
 - Compressed Air
 - Compressed Gas Cylinders
 - Cranes, Derricks and Hoists
 - Demolition
 - Electrical safety
 - Excavations and Trenching
 - Fall Protection – Floor openings/Stairways
 - Fall Protection – Guardrails Toe boards etc
 - Fall Protection – Leading Edge
 - Fall Protection – Personal Fall Protection Devices
 - Fire Protection and Fire Prevention
 - Hazard Communication (RIGHT TO KNOW)
 - Hazardous Energy & Lock Out / Tag Out
 - Housekeeping/ Sanitation
 - Maintenance and Protection of Traffic (MPT)
 - Man Lifts /Aerial Lifts
 - Marine Operations
 - Motor Vehicle Safety
 - Overhead Power lines
 - Permit Required Confined Space
 - Portable Ladders
 - Powered Actuated Tools
 - Powered Material Handling Equipment
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- Scaffolds – Mobile
- Scaffolds – Stationary
- Scaffolds – Suspended
- Slings
- Steel Erection
- Welding and Cutting (Hot Work)
- Airborne Contaminants – Particulates – General
- Asbestos
- Blood borne Pathogens
- Hearing Protection
- Lead in Construction
- Mercury in Construction
- PCB's
- Respiratory Protection
- Silica
- Thermal Stress
- West Nile Virus
- Rodents and Vermin
- Noise Mitigation Plan

Certain DDCM programs, such as Job Order Contracting System (JOCS), may not necessarily require Site Safety Plans. The JOCS contractor will be required to submit a Safety Program. In addition, certain DDCM Operating Units may establish program or client-specific safety requirements. The contractor's Site Safety Plan must address such program or client specific safety requirements.

VII. KICK-OFF MEETINGS/PRE-CONSTRUCTION AND SAFETY REVIEW

As part of the construction kick-off meeting, a Site Safety Plan review will be part of the agenda. A QACS representative will participate in this meeting with the contractor prior to the start of the project for the purpose of:

- A. Reviewing the safety issues detailed in the Agreement.
- B. Reviewing the Site Safety Plan.
- C. Reviewing any new issues or information that was not previously addressed.
- D. Discussing planned inspections and audits of the site by DDCM personnel.

VIII. EVALUATION DURING WORK IN PROGRESS

The Construction Manager's adherence to these Safety Requirements will be monitored throughout the project. This will be accomplished by the following:

- A. Use of a safety checklist by a representative of the Construction Safety Unit or other designated DDCM representative or Consultant during regular, unannounced inspections of the job site. Field Exit Conferences will be held with the RE/CPM, Construction Manager Superintendents or Safety Representatives.
- B. The RE/CPM will continually monitor the safety and environmental performance of the contractor's employees and work methods. Deficiencies shall be brought to the attention of the contractor's representative on site for immediate correction. The DDCM representative will maintain a written record of these deficiencies and forward them to the Construction Safety Unit on a weekly basis. Any critical deficiencies shall be immediately reported to QACS phone# (718) 391-1624 or (718) 391-1911.
- C. If the Construction Manager's safety performance during the project is not up to DDCM standards (safety performance measure, accident/incident rate, etc.) the Director- QACS, or designee will meet with the

- Construction Manager's safety representative, the DDCM project manager, the RE/CPM, or the DDCM Environmental Specialist (if environmental issues are involved). The purpose of this meeting is to 1) determine the level of non-compliance; 2) explain and clarify the safety/environmental provisions; 3) agree on a future course of action to correct the deficiencies.
- D. If the deficiencies continue to occur with inadequate attention by the contractor, this shall, among other remedies available, be grounds for default.
- E. The contractor shall inform the Construction Safety Unit and the Insurance and Risk Management Unit of all medical injuries or illnesses that require doctors' treatment resulting from an on-the-job incident within 24 hours of the occurrence. The Construction Safety Unit shall also be immediately informed of all fatalities, catastrophic accidents with more than one employee hospitalized, any injuries to members of the general public and major equipment damage (e.g., property damage, equipment rollovers, loads dropped from crane). QACS shall maintain a record of all contractor injuries and illnesses during the project and provide regular reports to the Agency.
- F. The Construction Safety Unit shall be immediately notified at the start of any NYS-DOL/ NYC-COSH/ OSHA/ EPA inspections. The Director of Quality Assurance & Construction Safety shall maintain a log of all contractor OSHA/EPA inspections and citations during the project.

IX. SAFETY PERFORMANCE EVALUATION

The contractor's safety record, including all DDCM inspection results, will be considered as part of the Construction Manager's performance evaluation at the conclusion of the project. Poor safety performance during the course of the project shall be a reason to rate a Construction Manager unsatisfactory which will be reflected in the Vendex system and will be considered for future procurement actions as set forth in CUCF's rules.

EXHIBIT I
 INSURANCE REQUIREMENTS

CITY UNIVERSITY CONSTRUCTION FUND (“CUCF”) A Consultant/Construction Manager Form of Certificate Shall Comply with this Form CERTIFICATE OF INSURANCE						
CONTRACT NAME:						
CONTRACT NUMBER:						
PRODUCER:				CERTIFICATE ISSUANCE DATE:		
ADDRESS:						
PHONE NUMBER:						
INSURED:				CO LTR	COMPANIES AFFORDING COVERAGE (use an additional page if necessary)	
				A		
				B		
				C		
COVERAGES (See Notes 1 and 2)						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS	
	GENERAL LIABILITY (Check all that apply): <input type="checkbox"/> Comprehensive Form <input type="checkbox"/> Premises/Operations <input type="checkbox"/> Undergrnd Expl.& Collapse Haz. <input type="checkbox"/> Products/Completed Oper. <input type="checkbox"/> Contractual <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Broad Form Property Dam. <input type="checkbox"/> Personal Injury				PER OCCURANCE	\$1,000,000
						\$
						\$
					GENERAL AGGREGATE	\$2,000,000
					COMPLETED OPERATIONS	\$2,000,000
	AUTOMOBILE LIABILITY (Check all that apply): <input type="checkbox"/> Any Auto <input type="checkbox"/> Owned Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-owned Autos				BODILY INJURY (Per Person)	\$1,000,000
BODILY INJURY (Per Accident)					\$	
PROPERTY DAMAGE					\$	
BODILY INJURY & PROPERTY DAMAGE COMBINED					\$	
	EXCESS LIABILITY (Check all that apply): <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other Than Umbrella Form	NO RETENTION/ DEDUCTIBLE			EACH OCCURANCE	\$
					AGGREGATE	TBD
	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				<input checked="" type="checkbox"/> STATUTORY LIMITS	
					E.L. EACH ACCIDENT	\$1,000,000
					E.L. DISEASE EACH EMPLOYEE	\$1,000,000
					E.L. DISEASE-POLICY LIMIT	\$1,000,000
	BUILDER'S RISK (See Note 3)					FULL CONTRACT VALUE

	ENVIRONMENTAL IMPAIRMENT LIABILITY				EACH OCCURENCE	
	PROFESSIONAL LIABILITY (No named insured or additional insured is covered by this type of insurance.)				AGGREGATE	\$25,000,000
	OTHER					

CERTIFICATE OF INSURANCE (Continued)		Page 2
<p>ADDITIONAL INSURED(S) (See Note 4) (Check all that apply):</p> <p><input type="checkbox"/> City University Construction Fund (“CUCF”) <input type="checkbox"/> The City University of New York (“CUNY”) <input type="checkbox"/> The State of New York <input type="checkbox"/> The City of New York <input type="checkbox"/> DASNY</p>	<p>NAMED INSURED(S) (BUILDER’S RISK INS. - See Note 4) (Check all that apply):</p> <p><input type="checkbox"/> City University Construction Fund (“CUCF”) <input type="checkbox"/> The City University of New York (“CUNY”) <input type="checkbox"/> The State of New York <input type="checkbox"/> The City of New York <input type="checkbox"/> DASNY</p>	
<p>NOTE 1: The subscribing insurance company(s), authorized to do business in the State of New York, certifies that insurance of the kinds and types and for limits of liability herein stated, covering the Contract herein designated, including its Article 23, has been procured by and furnished on behalf of the insured Construction Manager and the noted Additional Insureds, with CUCF being an Additional Insured as required by the Contract, and is in full force and effect for the period listed on the front of this Certificate of Insurance. In addition, the subscribing insurance company(s) certifies that the insurance limits for General Liability Insurance are not amended by deductible clauses of any nature except as has been disclosed to and approved by CUCF; and that coverage is afforded for the insured Construction Manager’s obligations under that provision of the contract providing for indemnification of the Indemnitees, including CUCF, named therein. Any exclusion applying to construction or demolition operations on or within fifty (50) feet of a railroad has been voided; and any employer liability exclusion which may otherwise operate to exclude claims for bodily injury asserted by an employee of an additional insured shall be voided.</p> <p>NOTE 2: Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days advance written notice of same to Director of Procurement Services, The City University of New York, Department of Design Construction & Management, 555 West 57th Street, 11th Floor, New York, New York 10019.</p> <p>NOTE 3: Builder’s Risk Insurance includes all of the named insureds as set forth above, (and where contractually required, _____) as Named Insureds as their interests may appear.</p> <p>NOTE 4: All references to Named Insureds and Additional Insureds include those entities’ respective directors, officers, and employees.</p> <p>NOTE 5: This certificate is issued to the certificate holder in consideration of the CUCF agreement entered into with the Named Insured. It is understood and agreed that the certificate holder relies on this certificate as a basis for continuing such CUCF agreement with the Named Insured.</p>		
AUTHORIZED INSURER/PRODUCER _____		
BY _____ (Signature)		
TITLE _____		

