

CONSTRUCTION MANAGEMENT AGREEMENT

BY AND BETWEEN

NYU HOSPITALS CENTER

- OWNER -

AND

- CONSTRUCTION MANAGER -

PROJECT

DATED AS OF

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CONSTRUCTION MANAGEMENT AGREEMENT

AGREEMENT dated as of _____, by and between **NYU Hospitals Center**, a New York not-for-profit corporation with offices located at 550 First Avenue, New York, New York 10016 (the "Owner"), and _____, a _____ with offices located at _____ (the "Construction Manager").

W I T N E S S E T H:

WHEREAS, the Owner intends to construct _____ (the "Project") located at _____ of NYU Langone Medical Center (the "Medical Center"), 550 First Avenue, New York, New York (the "Site"), all as set forth in and in strict conformance with the Contract Documents (as hereinafter defined); and

WHEREAS, the Owner has retained _____ together with certain engineers and other consultants as the architect of record for the Project and may retain other or substitute architects, engineers and consultants to provide design services for the Project (collectively the "Architect"); and

WHEREAS, the Owner desires to engage the Construction Manager to perform pre-construction services for the Project, to submit a proposed Guaranteed Maximum Price and Construction Schedule (as hereinafter defined) for the Project, and, if and to the extent so authorized by the Owner, to construct the Project, and the Construction Manager desires to accept such engagement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Owner and the Construction Manager agree as follows:

ARTICLE I (Contract Documents)

The "Contract Documents" consist of (i) this Agreement; (ii) the drawings, specifications and other documents issued hereafter by the Architect and approved by the Owner for use in preparing the GMP/Schedule Submission (as hereinafter defined) and all subsequent updates, additional drawings, revisions, modifications, addenda and changes thereto issued by the Architect and approved by the Owner; (iii) the description of the Project annexed hereto as Exhibit A; (iv) the Preliminary List of General Conditions Work Items annexed hereto as Exhibit B; (v) the list of Construction Manager's Project personnel annexed hereto as Exhibit C; (vi) the standard Subcontract forms annexed hereto as Exhibit D; (vii) the executed GMP/Schedule Amendment in the form annexed hereto as Exhibit E; (viii) the Final Payment Certificate, Release and Lien Waiver forms annexed hereto as Exhibit F; (ix) the Owner's Work Policies and Procedures annexed hereto as Exhibit G; (x) the Statement of Policy Regarding Reimbursement of Costs Under Cost Reimbursable Construction Contracts annexed hereto as Exhibit H (the "Statement of Policy"); and (xi) any Change Orders and amendments signed in accordance with this Agreement. The Contract Documents together form the Contract between the Owner and

Construction Manager. Each of the Contract Documents will be a part of the Contract to the same extent as if fully set forth in this Agreement in its entirety.

ARTICLE II (Scope of the Work)

2.1 The Project is described in Exhibit A.

2.2 The Construction Manager shall (a) perform pre-construction services for the Project; (b) submit a Guaranteed Maximum Price and Construction Schedule for the Project; (c) if and to the extent authorized by the Owner, construct the Project, using Subcontractors as provided herein, in a professional and workmanlike manner, within the applicable Guaranteed Maximum Price and on schedule, and achieve full and satisfactory completion of the Project in accordance with the terms of the Contract Documents; and (d) perform all other obligations of the Construction Manager as provided herein. The Construction Manager's pre-construction services and construction and completion of the Project (if and to the extent authorized) and performance of all other obligations hereunder shall constitute the "Work." The Work includes all labor, materials and other items necessary to make the Project complete and functional whether or not such items are fully detailed or specified in the Contract Documents, as long as such items are reasonably inferable from the Contract Documents.

2.3 Nothing contained in this Agreement shall be deemed to require or authorize the Construction Manager to perform any professional design services constituting the practice of architecture or engineering, other than customary design services furnished by Subcontractors as required by the Contract Documents; provided, however, that this Section 2.3 shall not be deemed to relieve the Construction Manager from liability for negligence or lack of due diligence in the performance of its obligations under the Contract Documents.

2.4 The Architect will not have authority from the Owner to alter the Owner's program for the Project, to modify the GMP or the time for performance and completion of the Work, to authorize the Construction Manager to proceed with construction, to amend or waive any provision of this Agreement, to issue change orders that have not been signed by the Owner, to take any action that would entitle the Construction Manager to any increase in the compensation set forth in this Agreement or to incur any obligation on the Owner's part to provide any compensation to the Construction Manager. The scope of authority of the Architect will not be expanded to include such matters except in a writing signed by the Owner and delivered by the Owner to the Construction Manager.

ARTICLE III (Construction Manager's Status and Duties)

3.1 General. The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Manager shall furnish all appropriate business administration, supervision, coordination and management required for the Work, and shall use its best skill and judgment to perform the Work in the most expeditious and economical manner consistent with the Contract Documents and with the

interests of the Owner as made known to the Construction Manager in writing. The Construction Manager shall cooperate with the Owner and Architect including their respective engineers and consultants in furthering the interests of the Owner with respect to the Project.

3.2 Pre-Construction. The Construction Manager shall perform the following pre-construction services for the Project:

(a) Prepare detailed cost estimates covering all anticipated Costs of the Work, and provide on-going estimating services as the Project design is developed.

(b) Consult and meet with the Owner and Architect including their respective engineers and consultants and make recommendations with respect to: selection of materials; availability and cost of materials, equipment and labor; selection of building systems and equipment; value engineering; costs of alternative designs or materials; construction phasing; and construction feasibility, alternative methods of construction and necessary temporary and support facilities and utilities.

(c) Provide cash flow schedules for the Work.

(d) With the Construction Manager's technical staff, attend all pre-construction meetings (to be held at least once every week).

(e) Review the design documents as they are developed and provide on-going critique of the design documents for completeness, coordination and buildability.

(f) Arrange for uncovering and investigation of possible hidden conditions that may affect the Project.

(g) Prepare Site logistics/mobilization and safety plans.

(h) Review all existing conditions and operations, prepare a phasing analysis and make recommendations regarding maintenance of operations, phasing, minimization of noise and vibration, control of dust and management of other potential sources of disruption to the Medical Center's operations.

(i) Prepare a preliminary schedule including design and construction milestones and all key decision points, in form suitable to the Owner. Update and expand the schedule to incorporate additional information and details as they become available and to reflect the actual progress of all pre-construction activities.

(j) Provide advice and assistance regarding approvals and permits.

(k) Advise the Owner as to the applicability and implementation of equal employment opportunity and affirmative action requirements.

(l) Advise the Owner as to insurance and bonding requirements.

(m) Make recommendations regarding possible modification of the Subcontract forms annexed as Exhibit D.

(n) Prepare standard documentation and reporting forms to be used on the Project, such as submittal logs, anticipated cost reports, requests for information (“RFI’s”), RFI logs and submittal and RFI tracking reports.

(o) Make recommendations regarding (i) the division of the Work in the drawings and specifications to facilitate bidding and award of Subcontracts, (ii) the bid documents required for each Subcontract, including, without limitation, the scope of Work, and (iii) bidding and award of contracts or Subcontracts for possible initial or long-lead equipment or Work, and for all other Work.

(p) Conduct competitive bidding for the Work.

(q) Assist the Owner in obtaining Certificate of Need approval for the Project from the State of New York as required. The Construction Manager acknowledges that such approval may be required prior to the start of construction of the Project. Also assist the Owner in obtaining all other governmental approvals that may be required for construction of the Project.

(r) Provide such other pre-construction services relating to the Project as the Owner and Construction Manager may agree.

3.3 Guaranteed Maximum Price and Schedule Submissions.

(a) When the drawings and specifications for the Project are sufficiently complete as agreed to between the Owner and Construction Manager, the Construction Manager shall submit to the Owner a proposed Guaranteed Maximum Price (“GMP”) and construction schedule (the “Construction Schedule”) for construction of the Project (the “GMP/Schedule Submission” or "Submission") in accordance with the Contract Documents. The Construction Manager shall include in the Construction Schedule proposed dates for ordering long lead items prior to the Owner's authorization to proceed with construction in order to avoid extension of the Contract Time.

(b) The Construction Manager shall provide in the proposed GMP and Construction Schedule for all Work indicated in or reasonably inferable from the drawings and specifications used to prepare the proposed GMP.

(c) The proposed GMP shall be based on competitive bidding for at least eighty-five percent (85%) of the Trade Work for the Project in accordance with Section 3.5.

(d) The proposed GMP shall not include Allowances or Holds except with the Owner’s prior approval. (i) An "Allowance" is an amount included in the GMP for a Trade Work item that requires further scope definition by the Architect or Owner. In the event that the actual Trade Work Costs for Trade Work covered by an Allowance are greater or less than the Allowance, a Change Order will be issued adjusting the GMP by the amount of such

difference, plus percentages to cover payment and performance bonds, and other Construction Manager insurance, but without markup for General Conditions Work Costs or Construction Fee. Use of Allowances will require the Owner's prior written approval. Unused Allowance amounts will not be available to cover other Costs of the Work. (ii) A "Hold" is an amount for a Trade Work item that has not yet been incorporated into a Subcontract scope. A "Hold" is not an Allowance, and the GMP will not be adjusted on account of costs that overrun or underrun a Hold. Use of Holds requires the Owner's prior written approval.

(e) The proposed GMP shall include a proposed contingency amount (the "Contingency"). The Contingency amount shall be subject to negotiation and approval by the Owner.

(f) The proposed GMP shall include a proposed fixed Construction Fee. The Construction Fee shall be subject to negotiation and approval by the Owner.

(g) The proposed GMP shall include an estimate of Site Labor costs and a proposed General Conditions Amount supported by a detailed estimate and a proposed Final List of General Conditions Items. The estimated Site Labor costs and the proposed General Conditions Amount and Final List of General Conditions Items shall be subject to negotiation and approval by the Owner.

(h) The Construction Manager shall include in the GMP/Schedule Submission a written statement of the basis of the proposed GMP and Construction Schedule, which shall include:

- (i) A calculation of the proposed GMP, including detailed breakdowns of the Trade Work Costs and General Conditions Work Costs.
- (ii) A list of the drawings and specifications used in preparation of the Submission.
- (iii) A list of any Allowances and Holds and a statement of their basis.
- (iv) A list of the clarifications and assumptions by the Construction Manager in preparation of the Submission.

(i) The Construction Manager shall meet with the Owner and Architect to review the proposed GMP and Construction Schedule. In the event that the Owner or the Architect discovers any inconsistencies or inaccuracies in the information presented, the Construction Manager shall make appropriate revisions to the Submission.

(j) The Owner may negotiate and approve the GMP and components thereof and the Construction Schedule at any time within thirty (30) days after the Owner's receipt of the Submission or within such longer time as the Construction Manager may agree. The GMP shall not be subject to adjustment for subsequent delay in authorizing construction

provided that the Owner authorizes the Construction Manager to proceed with construction within ninety (90) days after acceptance of the GMP as provided in Section 3.10 of this Agreement. If the Owner authorizes the Construction Manager to proceed with construction after such ninety (90) day period, the GMP shall be equitably adjusted on account of increase in the Costs of the Work resulting from delay in authorizing construction beyond such ninety (90) day period.

(k) Except by advance written authorization of the Owner, the Construction Manager shall not incur any Costs of the Work with respect to the Project prior to execution of the GMP/Schedule Amendment for the Project.

(l) Upon acceptance by the Owner of the proposed GMP and Construction Schedule (with any agreed revisions), the Owner and Construction Manager shall execute an Amendment to this Agreement in the form annexed hereto as Exhibit E (the "GMP/Schedule Amendment"). The GMP set forth in such Amendment shall be the GMP for the Project and the Construction Schedule annexed to such Amendment shall be the Construction Schedule for the Project.

(m) In the event that the Owner and Construction Manager do not execute a GMP/Schedule Amendment for the Project within thirty (30) days after the Owner's receipt of the GMP/Schedule Submission for the Project or within such longer time as the Construction Manager may agree, the Construction Manager shall have no obligation to provide further services with respect to the Project and the Owner shall have no obligation to make any payment to the Construction Manager for construction of the Project; provided, however, that the Owner shall reimburse the Construction Manager for Costs of the Work incurred by the Construction Manager pursuant to written authorization by the Owner to proceed with construction prior to executing a GMP/Schedule Amendment and shall pay the Construction Manager a negotiated fixed fee which shall not exceed _____ percent (____%) of such authorized Costs of the Work.

(n) The Owner is not obligated to execute a GMP/Schedule Amendment for the Project, or to authorize the Construction Manager to incur any Costs of the Work for the Project prior to execution of a GMP/Schedule Amendment. The Owner may decide, in its sole and absolute discretion, not to execute a GMP/Schedule Amendment for the Project. The Construction Manager shall have no claim against the Owner for damages of any kind on account of any decision by the Owner not to execute a GMP/Schedule Amendment for the Project. At any time the Owner may contract with one or more third parties for construction of the Project.

3.4 General Conditions Work and Trade Work. All Work other than the pre-construction services shall be divided between administrative, supervisory, coordination, management and support services and related obligations of the Construction Manager under this Agreement (the "General Conditions Work") and all other Work (the "Trade Work"). The General Conditions Work shall include, without limitation, the on-site labor employed by the Construction Manager to perform clean-up and other labor support functions ("Site Labor") and other items listed in the "Preliminary List of General Conditions Work Items" annexed hereto as

Exhibit B, as such list may be updated in the "Final List of General Conditions Work Items" annexed to the GMP/Schedule Amendment and shall be subject to the following requirements:

(a) All Trade Work, and General Conditions Work as approved by the Owner in advance, shall be performed or furnished by trade contractors and suppliers under subcontracts and purchase orders entered into by the Construction Manager directly, as principal. Each such subcontract and purchase order, including any subcontract or purchase order for General Conditions Work, is referred to herein as a "Subcontract" and each trade contractor or supplier entering into a Subcontract is referred to herein as a "Subcontractor." The Owner will not be a party to any Subcontract, but will be a third-party beneficiary of each Subcontract.

(b) The Construction Manager shall use the Subcontract forms annexed hereto as Exhibit D for all Subcontracts, with any modifications approved by the Owner in writing, and shall not materially modify these forms without the Owner's prior written approval.

(c) The Construction Manager shall not enter into any Subcontract for Trade Work without the Owner's prior written approval, which shall not be unreasonably withheld.

(d) The Construction Manager shall not enter into a Subcontract without first reviewing the Subcontractor's financial condition, capability of furnishing payment and performance bonds, qualifications and experience and (to the extent required) licensed in its particular trade. In the event that any Subcontractor's financial condition as reported by independent credit rating agencies does not meet the minimum acceptable ratings established by the Construction Manager or Owner, the Construction Manager shall include the statement "Financial Alert" in bold font next to the name of the Subcontractor on all bidders lists, bid tabulations and bid leveling sheets and other analyses comparing bids provided to the Owner.

(e) The Construction Manager shall be responsible for avoiding jurisdictional and other Site-specific labor disputes involving the labor employed at the Site by the Construction Manager, Subcontractors and sub-subcontractors of any tier. The Construction Manager shall not be responsible for industry-wide labor disputes.

(f) The Construction Manager shall not materially amend or change any Subcontract without the Owner's prior written approval, which approval shall not be unreasonably withheld, nor shall the Construction Manager take any action that is inconsistent with or in breach of any Subcontract.

(g) The Construction Manager shall not enter into an agreement with any Subcontractor waiving or otherwise relinquishing or modifying any defenses to any Subcontractor claim.

(h) Neither the Construction Manager nor any of its parents, subsidiaries, affiliates, officers, directors, members, shareholders or employees shall have any interest, direct or indirect, in any Subcontractor or sub-subcontractor of any tier by which a benefit is derived from the Subcontractor's or sub-subcontractor's participation in the Project;

provided, however, that in the Owner's sole and absolute discretion the Owner may, based on demonstration by the Construction Manager of significant economic benefit to the Owner, authorize award of a Subcontract to an affiliate of the Construction Manager on condition that the Construction Manager has disclosed fully to the Owner the true and actual cost of the Subcontract, including any fees, rebates or other consideration to be derived by the Construction Manager from the proposed Subcontract.

3.5 Competitive Bidding for Trade Work. The Construction Manager shall conduct competitive bidding for the Trade Work as follows:

(a) The Construction Manager shall recommend pre-qualification criteria for bidders, prepare proposed bidders lists for all trades (including all equipment and material purchases) and a trade-by-trade master bidders list, and develop interest in the Project among potential bidders to achieve effective price competition in each trade. Bidders lists shall be subject to the Owner's approval, and the Owner shall be entitled to add the names of qualified contractors (to which the Construction Manager has no reasonable objection) to such lists.

(b) The Construction Manager shall prepare bid packages for each separate component of the Trade Work. The Construction Manager shall ensure that all items of work, labor, services, materials, equipment and other requirements for the full and complete construction of the Project as required by the Contract Documents, excluding only the General Conditions Work, are assigned to appropriate bid packages, and shall coordinate the bidding and buy-out of the Trade Work to accomplish this result. Bid packages shall include invitations, response forms, scopes of work, unit price schedules and all other documents necessary to secure appropriate pricing for the Work, including, where feasible, detailed unit price schedules to enable the Owner to negotiate Change Orders.

(c) The Construction Manager shall solicit bids from each bidder on the bidders list approved by the Owner for each trade and each equipment and material purchase, and endeavor to secure at least three (3) complete, responsive and responsible bids for each Subcontract. Bids shall include unit prices for extra work. The Construction Manager shall instruct each bidder to submit a sealed bid to the Construction Manager and to send the Owner a copy of such bid at the same time, and shall follow any other bidding procedures established by the Owner.

(d) The Construction Manager shall receive bids, prepare bid tabulations and bid leveling sheets and other analyses comparing the bids, negotiate with bidders as authorized by the Owner, make recommendations to the Owner regarding award or rejection of bids and prepare award documentation. The Owner and Architect shall be permitted to attend all meetings with bidders. Copies of all communications with bidders shall be submitted to the Owner.

(e) As soon as practicable after final negotiations for, but prior to award of, a Subcontract, the Construction Manager shall require the Subcontractor to prepare a trade payment breakdown of the Work to be performed under such Subcontract, in a form meeting the requirements of the Owner, for the Owner's written approval.

(f) With the Owner's prior written approval as required by Section 3.4(c) of this Agreement, the Construction Manager shall prepare and execute Subcontracts for the Trade Work using the forms annexed hereto as Exhibit D (with any agreed modifications). Owner's Work Policies and Procedures (Exhibit G), with any revisions or supplements issued by the Owner, shall be included as part of each Subcontract.

(g) If the Owner refuses to approve a Subcontractor recommended by the Construction Manager, the Construction Manager shall recommend a substitute Subcontractor acceptable to the Owner. If the Subcontractor that the Owner refused to approve was on the bidders list approved by the Owner pursuant to Section 3.5(a) of this Agreement and such Subcontractor meets all requirements of the Contract Documents and is otherwise qualified for Subcontract award, the GMP and/or the Contract Time shall be adjusted to cover the difference (if any) between the price and/or duration of the Subcontractor first recommended by the Construction Manager and the price and/or duration of the substituted Subcontractor as set forth in the executed Subcontract.

(h) The Owner shall have the right to direct the Construction Manager to award a Subcontract to a particular Subcontractor, provided that the Construction Manager does not have a reasonable objection to the use of such Subcontractor. The GMP and/or the Contract Time shall be adjusted to cover the difference (if any) between the price and/or duration of the Subcontractor recommended by the Construction Manager and the price and/or duration of the Subcontractor that the Owner directed the Construction Manager to use as set forth in the executed Subcontract.

3.6 Competitive Bidding for General Conditions Work. To the extent feasible and practical, the Construction Manager shall conduct competitive bidding for the General Conditions Work not performed by the Construction Manager's own forces.

3.7 Guaranteed Maximum Price. The GMP for the Project, as adjusted by Change Orders (if any), is the maximum compensation payable by the Owner to the Construction Manager pursuant to this Agreement for construction of the Project, except as otherwise expressly provided herein. The GMP for the Project is subject to adjustment only by Change Order.

3.8 Payment and Performance Bonds.

3.8.1 The Owner shall have the right to require the Construction Manager to provide payment and performance bonds, in form and content acceptable to the Owner, each in the full amount of the GMP, with the Owner named as obligee. If the Owner so requires, the Construction Manager shall provide such bonds within ten (10) days after executing the GMP/Schedule Amendment and before the Construction Manager performs any Work at the Project Site.

3.8.2 The Construction Manager shall cause the Subcontractor on each Subcontract with a price of \$100,000.00 or more to provide payment and performance bonds, in form and content acceptable to the Owner, with the Owner and Construction Manager each

named as obligees. The Construction Manager shall not permit a Subcontractor required to provide payment and performance bonds to begin Work until its bonds have been issued and delivered to, and accepted by, the Construction Manager and copies thereof (with duplicate original multiple obligee riders) have been delivered to the Owner. A form of payment and performance bond for use in connection with this Section 3.8 are annexed hereto as Exhibit J.

3.9 Pre-purchase of Materials and Equipment. If so directed by the Owner, the Construction Manager, as agent for the Owner, shall pre-purchase materials and equipment to be included in the Trade Work for the Project prior to execution of the GMP/Schedule Amendment. Upon execution of the GMP/Schedule Amendment, the Owner shall assign any purchase orders for such materials or equipment to the Construction Manager and the Construction Manager shall accept such assignment and assume the Owner's obligations thereunder. Each purchase order assigned to the Construction Manager shall be considered a Subcontract upon such assignment and payments pursuant to such purchase orders shall be Costs of the Work.

3.10 Construction. The Construction Manager shall proceed with construction of the Project upon receipt of the Owner's written authorization to proceed. The Owner's authorization to proceed with construction may be given at any time during the first ninety (90) days after acceptance of the proposed GMP and Construction Schedule without affecting the GMP. During construction, the Construction Manager shall:

(a) Administer, supervise and manage the full and satisfactory performance and completion of the Work, coordinate and schedule the Work of each Subcontractor with the Work of all other Subcontractors, with the operations of the Medical Center and with the activities of the Owner and Architect including their respective engineers and consultants, and require each Subcontractor to complete its Work in accordance with its Subcontract and the Contract Documents. The Construction Manager shall coordinate closely with the Owner's facilities and construction staff with respect to construction phasing, any shut-downs and planned utility disruptions and other interface between the Work and the Medical Center's operations. The Construction Manager shall maintain an on-Site, full-time field office with sufficient staff to carry out the administration, supervision and management of the Work.

(b) Monitor and inspect the Work to determine whether the Work is being performed in accordance with the requirements of the Contract Documents, guard against defects and deficiencies in the Work and provide and implement a quality control program. The Construction Manager shall ensure that the Work complies with all terms and conditions of the Subcontracts and Contract Documents, and shall be fully responsible to the Owner for the complete performance of Work by the Subcontractors, including, without limitation, any defects or deficiencies in the Work and any other failures of the Subcontractors to comply with the Subcontracts and Contract Documents. If any Subcontractor fails to comply with the Contract Documents, the Construction Manager shall take prompt action to cure such failure and to bring about satisfactory performance. If and when directed by the Owner, the Construction Manager shall stop the Work or any portion thereof and require special inspection or testing of any Work and, if required by the Owner, after examination and determination of non-compliance, the Construction Manager shall require removal, uncovering, repair and restoration, whether or not

such Work be then fabricated, installed or completed, in accordance with the requirements of the Contract Documents, without increase to the GMP; provided, however, that such special inspection or testing shall be at the Owner's cost and expense in the event that the Work in question is determined to be in accordance with the Contract Documents.

(c) Perform the General Conditions Work.

(d) Expedite purchase and delivery of long-lead equipment required in connection with the Work and advise the Owner with respect to potential delays in such purchase and delivery.

(e) Update the Construction Schedule monthly. The Construction Manager shall re-schedule and re-sequence the Work as necessary to avoid or mitigate delays. Whenever an update of the Construction Schedule shows slippage affecting the dates for completion of the Work, the Construction Manager shall notify the Owner and Architect of the corrective action that is being taken or that the Construction Manager recommends to recover the schedule. The provisions of this sub-section are subject to Sections 5.4 and 5.5 of this Agreement.

(f) Prepare an anticipated cost report of construction costs for the Project and update this report on a monthly basis. The Construction Manager shall utilize a format for the anticipated cost report reasonably acceptable to the Owner. Whenever the Construction Manager anticipates that a projected cost may exceed the amount allocated therefor in the GMP, the Construction Manager shall promptly notify the Owner and Architect and recommend corrective action.

(g) Schedule and conduct weekly progress meetings with the Owner and Architect for the purposes of updating the Owner with a Project status review, providing coordination between the design team and the Construction Manager and addressing responses to RFI's. Prepare and furnish to all attendees minutes of such meetings, to be issued to all parties prior to the next scheduled meeting.

(h) Schedule and conduct weekly trade meetings with Subcontractors for the purposes of coordinating and scheduling the Subcontractors' Work. The Owner and Architect shall be permitted to attend such meetings. Prepare and furnish minutes of such meetings to all attendees and the Owner and Architect, prior to the next scheduled meeting.

(i) To the extent provided therefor in the GMP, and in conjunction with the Architect and Owner, identify, require and arrange to be performed by an independent testing laboratory or other consultant, all subject to the Owner's prior reasonable approval, such tests of the Work as shall be determined to be necessary and appropriate including special inspections.

(j) Obtain or arrange for all construction and other licenses, permits, fees, inspections, certificates and other governmental authorizations required for the proper execution and completion of the Work except if and to the extent that under applicable contract, law or practice, they must be or are normally obtained by the Owner (such as the building

permit) or the Architect, and, in such event, cooperate with the Owner and Architect, as the case may be, in obtaining such licenses and permits. The Construction Manager shall give all notices required by, and comply with, all Federal, State and local laws, ordinances, rules, regulations and orders applicable to performance of the Work.

(k) Keep such accounts and cost records, in addition to those specified in Article XXI of this Agreement, as are normally maintained by the Construction Manager on projects of this type, which shall include, without limitation, records of the Costs of the Work, records required in connection with Subcontractor time and material and unit price change order work, timesheets (with supervisor verification) for the Construction Manager's salaried personnel, payroll records for hourly personnel and workers (which shall be certified as to prevailing wage requirements to the extent that such requirements apply to the Work) for other labor used in performing the Work in accordance with such requirements and records of workforce monitoring by the Construction Manager for compliance with affirmative action goals. All such records shall be kept for a period of not less than six (6) years after final payment has been made by the Owner to the Construction Manager under this Agreement.

(l) Develop, implement and enforce a comprehensive safety plan and comprehensive safety procedures for the Project, in strict accordance with New York City Building Department, OSHA and other applicable requirements. Prepare, file and secure required New York City Building Department approval for a comprehensive Site Safety and Logistics Plan and thereafter implement and enforce the plan.

(m) Assist and cooperate with the Owner, at the Owner's additional cost and expense (not subject to the GMP), in legal actions or proceedings involving the Owner that may arise out of or relate to the Work; provided, however, that the Construction Manager shall not be entitled to reimbursement for costs arising out of disputes between the Owner and Construction Manager.

(n) Supervise the correction by Subcontractors of any defective Work.

(o) Schedule and coordinate the submission by Subcontractors and subsequent approval by the Architect and other consultants of all required shop drawings, samples and catalog cuts; review such submissions for general compliance with the Contract Documents; maintain a log of all such submissions; promptly advise the Owner of any potential problems pertaining to the timeliness of such submissions and approvals; advise the Owner periodically as to the status of such submissions; advise the Owner and Architect of any errors in such submissions that are discovered by the Construction Manager; and coordinate the various disciplines after approval of the respective submissions and before installation. The Construction Manager shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of the Construction Manager's submissions unless the Architect has been specifically informed in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Architect's approval shall not relieve the Construction Manager of responsibility for errors or omissions in any submissions.

(p) Cause Subcontractors to maintain and provide, on an on-going and continuous basis, comprehensive "as-built" drawings of their Work, under the terms of their respective Subcontracts, and deliver all as-built drawings to the Architect for approval and thereafter to the Owner, prior to final payment to each such Subcontractor or earlier as directed by the Owner.

(q) (i) Keep the Site and the Project free at all times from unreasonable accumulation of waste material or rubbish caused by the Work. Daily stockpiling of rubbish and debris shall be required, to the maximum extent possible. Immediately before Substantial Completion of the Work, the Construction Manager shall cause all waste material and rubbish, and, to the extent practicable, all tools, construction equipment, machinery and surplus materials, to be removed from and about the Site, and shall cause the Project to be broom cleaned.

(ii) In the event that the Construction Manager encounters at the Site material reasonably believed to be hazardous that has not been rendered harmless and is not identified as the Construction Manager's responsibility under the Contract Documents, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Owner shall verify the presence or absence of hazardous material as reported by the Construction Manager. In the event such material is found to be hazardous, the Owner shall verify that it has been rendered harmless or cause it to be rendered harmless. Thereafter, Work in the affected area shall be resumed. The Contract Time and GMP shall be adjusted as provided in Sections 5.4 and 5.5 of this Agreement on account of the additional time and costs of shut-down, delay and start-up. The Construction Manager agrees that it will be solely responsible for the removal from, under or around the Site, of any hazardous material brought to the Site by the Construction Manager or improperly released as a result of negligence or willful misconduct by the Construction Manager, any Subcontractor or sub-subcontractor of any tier or any of their employees. Any hazardous material present at the Site prior to the time construction commences is not the responsibility of the Construction Manager, except for proper removal thereof as part of the Work under the Contract Documents or wrongful release as provided in the preceding sentence. The provisions of this Section 3.10(q)(ii) shall survive the termination of the Contract Documents and the completion of the Work to be performed thereunder.

(r) Review requests for changes as authorized by the Owner, submit recommendations to the Owner regarding such requests, make independent recommendations regarding changes to the Work to enable expeditious and economical completion of the Work, negotiate Change Orders with the Owner and Subcontract change orders with Subcontractors and prepare and process written Subcontractor change orders and transmit them to appropriate Subcontractors.

(s) Review and correct Subcontractors' monthly requisitions for progress payments and submit them as part of the Construction Manager's monthly Requisitions. The Construction Manager's monthly Requisitions shall be in a form acceptable to and in full conformance with the Owner's requirements and Article XI of this Agreement.

(t) To the extent requested by the Owner, cooperate with the Owner in the selection and retention of professionals and other consultants in connection with the Work.

(u) Consult with the Owner and Architect when any Subcontractor requests interpretation of the Contract Documents.

(v) Make recommendations to the Owner regarding the advisability of arranging payment for materials stored off-Site, cooperate with the Owner in making arrangements for inspection of such materials, including such arrangements as the Owner shall deem necessary or desirable for (i) access to such materials for the purpose of segregation, on-going inspection and removal of such materials, (ii) protecting the Owner's title to such materials, free and clear of all liens, encumbrances and rights of others and (iii) insuring and protecting the same.

(w) Consult with the Owner and Architect in the preparation and completion of lists ("Punch Lists") of Punch List Work for the various Subcontractors, supervise and expedite the performance of Punch List Work, assist in conducting inspections required to determine Subcontractors' substantial completion of their respective Work and compliance with Punch Lists, arrange for completion of Punch List Work by others, if required, including processing of appropriate back charges, and assist in conducting final inspections of the Work.

(x) Cooperate with the Owner's maintenance and operational personnel during initial start-up and testing of utilities, equipment and all systems.

(y) Review requests for final payment by Subcontractors and make recommendations to the Owner regarding approval thereof; and receive and transmit to the Owner required cost certifications and other documentation required by the Owner, as well as guarantees and warranties, spare parts, affidavits, releases, certificates of compliance, maintenance manuals, lien releases and other waivers, bonds and other close-out documents required by the Contract Documents and the Subcontracts or reasonably requested by the Owner prior to final payment to Subcontractors. Close out all Subcontracts.

(z) Maintain a complete set of drawings, specifications, Subcontracts, shop drawings and related documents at the Site.

(aa) Enforce post-construction guarantees and warranties of Subcontractors.

(bb) Review Subcontractors' insurance certificates to determine whether they comply with the Contract Documents.

(cc) Assist the Owner in obtaining final permits or approvals related to any existing certificate of occupancy or in obtaining a new certificate of occupancy for the Project.

(dd) Take all measures reasonably available to the Construction Manager to avoid and resolve labor disputes and jurisdictional disputes.

(ee) Take such action as may be reasonably necessary in an emergency to protect life and property and notify the Owner of such action as soon as practicable.

(ff) Cause inspection or approval to be performed if and to the extent any of the Work is required to be inspected or approved by any public authority or agency. No inspection or failure to inspect by the Owner or Architect shall be a waiver of any of the Construction Manager's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

(gg) Promptly notify the Owner and Architect in writing if the Construction Manager observes that any of the Contract Documents or any portion of the Work as designed is at variance with any applicable laws, codes, ordinances, regulations or other governmental requirements in any respect and advise the Owner and Architect as to any changes needed as a result of such variance.

(hh) Comply with the Owner's Work Policies and Procedures set forth in Exhibit G and any revisions or supplements issued by the Owner and cause all Subcontractors and sub-subcontractors of any tier to comply with such requirements. The GMP will be adjusted to cover the increased Costs of the Work attributable to compliance with material revisions or supplements to such requirements.

(ii) Implement the sales and compensating use tax provisions of the Subcontracts.

(jj) Provide such other construction services relating to the Project as required by the Contract Documents or as the Owner and Construction Manager may agree.

3.11 Coordination With the Owner's FF&E. To the extent required by the Owner, the Construction Manager shall, as part of the Work, coordinate with the purchase, expediting, delivery and handling of all of the Owner's furnishings, fixtures and equipment.

3.12 Construction Manager's Personnel.

3.12.1 The Construction Manager acknowledges that, as an essential inducement for the Owner to enter into this Agreement, the Construction Manager has agreed to and shall assign the personnel listed in Exhibit C or in the GMP/Schedule Amendment to the Project on a part-time or full-time basis until the Project is finally completed. The Construction Manager agrees not to remove or reassign any personnel above the level of superintendent (the "Senior Staff") while in the Construction Manager's employ without obtaining, in each case, the Owner's prior written approval. If one of the Senior Staff becomes unable to perform by virtue of sickness or other disability or leaves the Construction Manager's employ or is removed or reassigned with the Owner's prior written approval or at the Owner's request, the Construction Manager shall submit to the Owner the names and resumes of proposed candidates for a successor and shall continue to do so until the Owner approves a successor. No individual shall serve as part of the Senior Staff without the Owner's prior written approval.

3.12.2 If the Owner at any time reasonably requests that one of the Construction Manager's employees be removed from further duties in connection with the Project, the Construction Manager shall comply immediately with such request and, subject to the Owner's prior written approval, promptly submit a replacement following the procedures provided in Section 3.12.1 of this Agreement.

3.13 Non-Discrimination and Affirmative Action Requirements. The Construction Manager shall comply with the following non-discrimination and affirmative action requirements and cause all Subcontractors and sub-subcontractors of any tier to comply with such requirements:

(a) In connection with the performance of the Work the Construction Manager agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age or sexual orientation. This shall include, without limitation, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) The Construction Manager agrees to post in conspicuous places, and have available to employees and applicants for employment, notices setting forth the provisions of these non-discrimination and affirmative action requirements.

(c) The Construction Manager shall use good faith efforts to utilize certified small businesses, minority business enterprises ("MBE") and women-owned business enterprises ("WBE) and to place qualified small businesses, MBEs and WBEs on solicitation lists; dividing total requirements into smaller tasks or quantities when economically feasible to permit maximum participation by small businesses, MBEs and WBEs; establishing delivery schedules where the requirements permit, which encourage participation by small businesses, MBEs and WBEs; and utilizing the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. The Construction Manager shall prepare and deliver to the Owner written reports describing the affirmative steps taken with respect to the Project as requested by the Owner.

(d) The Contract may be terminated by the Owner for default pursuant to Section 18.3 of this Agreement in the event of any violation of the terms or conditions of the foregoing provisions.

(e) The Construction Manager further agrees to insert the foregoing provisions in all Subcontracts hereunder in order that each Subcontractor engaged in the Work shall be obliged to comply with and bound by the foregoing requirements.

**ARTICLE IV
(Owner's Responsibilities)**

4.1 The Owner shall provide all relevant construction information regarding its requirements for the Project, including the Owner's objectives, constraints and criteria and drawings and specifications marked for construction.

4.2 The Owner shall retain the Architect including, either directly or through the Architect, all professional, engineering and technical consultants required for the Project design and preparation of drawings and specifications. The Owner shall cause the Architect and other direct consultants to respond to shop drawings and other submittals by the Construction Manager within fourteen (14) calendar days of submission except in instances where review within such time is not required in order to complete the Work within the Contract Time and provided that the Construction Manager has furnished the Architect with a schedule of submittals and has complied with such schedule.

4.3 The Owner shall promptly notify the Construction Manager of any fault or defect in the Work or non-compliance with the Contract Documents that comes to its attention. This shall not, however, relieve the Construction Manager of its full responsibility for performance of the Work.

4.4 The Owner's representative for purposes of this Agreement shall be the Owner's Senior Vice President for Facilities Management or his designee. The Owner's representative shall be fully acquainted with the scope of the Work and the Owner's requirements and objectives and shall have full authority to furnish information expeditiously and to act on behalf of the Owner in connection with all aspects of this Agreement and the Project.

4.5 The Owner shall be responsible for and shall obtain, secure and pay for all necessary rights of access to the Site and for all necessary community board, City Planning Commission, Landmarks Commission, Bureau of Standards and Appeals and City Council approvals and Building Department permits required for the construction of the permanent structures and for demolition or changes in existing facilities or structures and any and all easements or licenses required in connection with the Project. The Construction Manager shall fully cooperate with and assist the Owner and Architect in obtaining such rights, approvals, easements and licenses. This shall not be deemed to modify in any way the Construction Manager's responsibilities under Section 3.10(j) of this Agreement.

4.6 As a general operating procedure, communications with the Subcontractors shall be through the Construction Manager.

4.7 The Owner shall issue to the Construction Manager an Exempt Organization Exempt Purchase Certificate, ST-119.1, for the Construction Manager's use in connection with all labor and materials to be incorporated into the Project as part of the Work.

ARTICLE V
(Time Requirements and Delay)

5.1 Subject to authorization by the Owner to proceed, the Construction Manager shall cause construction of the Project to be commenced promptly and carried diligently to completion as expeditiously as possible and as scheduled. The Construction Manager shall achieve Substantial Completion of the Work of the Project within the timeframe set forth in the applicable GMP/Schedule Amendment (the "Contract Time"). Time is of the essence of the Contract.

5.2 The Work of the Project shall be deemed to have reached "Substantial Completion" when the following conditions have been met:

(a) The Architect has issued a Certificate of Substantial Completion (unless the Architect refuses to issue a Certificate of Substantial Completion because of a dispute between the Owner and Architect); and

(b) All governmental and other approvals for use and occupancy of the Work have been received, including, without limitation, all required certificates, sign-offs and other approvals by New York City Department of Buildings and the New York State Department of Health (except for any approval that has not been received because of issues of Code interpretation by the Architect or other issue beyond the Construction Manager's reasonable control); and

(c) The Project is sufficiently complete in accordance with the Contract Documents such that the Owner can occupy and use each portion of the Work for its intended purposes. Minor items of completion or correction ("Punch List Work") may be performed after Substantial Completion, provided that such items can and shall be performed at such times and in such manner that such Work does not unreasonably interfere with the Owner's occupancy and use of the Project. The Construction Manager acknowledges that because of the nature of the Project, the Owner's occupancy and use will require a high level of completion and minimal Punch List Work.

5.3 The Construction Manager acknowledges that the Owner intends to proceed at the earliest possible time with installation of furniture, fixtures and equipment and other work that the Owner must perform in order to occupy and use each component and sub-component of the Project (the "Owner's Work"). The Construction Manager shall allow the Owner's Work to proceed without unreasonable interferences and shall coordinate the Construction Manager's Work with the Owner's Work and cooperate with the Owner and the Owner's contractors in their performance of the Owner's Work. Before entering into contracts for Owner's Work to be performed prior to Substantial Completion of the Project, the Owner shall consult and cooperate with the Construction Manager on labor jurisdiction issues so as not unreasonably to disturb labor harmony on the Project.

5.4 The Construction Manager acknowledges that the Owner will suffer material monetary damages if the Work is not substantially completed within the Contract Time, including, without limitation, loss of use and extension costs, and agrees that the Construction Manager shall be fully liable to the Owner for all such damages; provided, however, that the Construction Manager's total liability for such damages shall not exceed \$_____. If the Owner reasonably determines that the Work will not be completed within the Contract Time without acceleration and such delay is the responsibility of the Construction Manager hereunder, in addition to any and all other remedies the Owner may have, the Owner may order the Construction Manager to take such steps as may be necessary to accelerate the Work so as to recover lost time, to the extent possible, including, without limitation, Subcontractor overtime, and the Construction Manager shall comply with such steps without increase to the GMP.

5.5 If the Construction Manager demonstrates that completion of the Project is delayed (and such delay cannot reasonably be overcome by the Construction Manager through re-sequencing or other schedule adjustments without additional cost) by reason of (a) an act, failure to act, direction, order, neglect, delay or default of the Owner, Architect or other contractors or consultants hired by the Owner (including, without limitation, untimely review of submittals by the Architect, suspension of the Work because of non-payment and unreasonable interference by the Owner's Work), (b) errors or omissions in the design of the Project, (c) changes in the Work, (d) fire, lightning, earthquake, enemy action, unusually severe weather (specifically excluding weather conditions of the type and duration typically encountered in the New York City metropolitan area), act of God or similar catastrophe, (e) industry-wide labor disputes or strikes or (f) any hazardous substance present at the Site (except to the extent of the Construction Manager's responsibility pursuant to Section 3.10(q)(ii) of this Agreement, (g) differing conditions defined in Section 10.7 of this Agreement, (h) delay in authorizing the Construction Manager to proceed with construction or (i) other causes beyond the control of the Construction Manager or any Subcontractor or sub-subcontractor of any tier, and not resulting in case of any such causes listed in (a)-(i) from the fault or neglect of the Construction Manager or any Subcontractor or sub-subcontractor of any tier, their agents or employees, then the Contract Time shall be extended for each day of such demonstrated delay. The parties acknowledge that the Contract Time takes into account normally anticipatable adverse weather and the Construction Manager shall not be entitled to extension of the Contract Time due to weather conditions not meeting the criteria described in this Section 5.5. The Construction Manager shall not be entitled to any extension of time unless claim therefor is presented to the Owner in writing as provided in Article XV of this Agreement.

5.6 The Construction Manager and Subcontractors shall make no claim against the Owner or Architect for damages suffered by the Construction Manager (or any Subcontractor) of any kind on account of any delay or suspension of the Work, other than reimbursement for demonstrable direct Costs of the Work caused by the Owner, the Architect or other contractors or consultants hired by the Owner.

5.7 The Construction Manager shall complete the Punch List Work for the Project no later than thirty (30) days after Substantial Completion of the Project. The Construction Manager shall be fully liable to the Owner for all damages suffered by the Owner as a result of delay in achieving final completion of the Work.

**ARTICLE VI
(Preconstruction Fee)**

For all pre-construction services of the Construction Manager under this Agreement, the Owner shall pay to the Construction Manager a fixed fee (the "Preconstruction Fee") in the amount of \$_____. The Construction Manager will not be entitled to reimbursement of costs incurred by the Construction Manager in connection with the pre-construction services.

**ARTICLE VII
(Costs of the Work)**

7.1 The term "Costs of the Work" shall mean the costs identified in Section 7.2.1, excluding any and all items set forth in Article VIII of this Agreement. The Costs of the Work include "Trade Work Costs" (identified in Section 7.2.1(a)) and "General Conditions Work Costs" (identified in Sections 7.2.1(b) - (e)). Subject to the GMP for the Project, the Owner shall pay the Construction Manager for the Costs of the Work for the Project and pay the Construction Manager the Construction Fee as set forth in Article IX of this Agreement. The Construction Manager shall endeavor to minimize costs consistent with this Agreement, sound business practice and the Owner's instructions. The Costs of the Work plus the Construction Fee for the Project shall not under any circumstances exceed the GMP as it may from time to time be adjusted, all as set forth elsewhere in this Agreement.

7.2.1 Reimbursement of Costs of the Work shall be governed by the Statement of Policy except that all costs of the General Conditions Work Items are covered by the fixed General Conditions Amount and are not reimbursable. The Costs of the Work include the following costs, provided that they are reimbursable under the Statement of Policy and not excluded under Article VIII of this Agreement:

(a) Costs of the Trade Work for the Project, consisting of amounts properly payable by the Construction Manager pursuant to Subcontracts for Trade Work including the costs of Subcontractor payment and performance bonds.

(b) Compensation for all General Conditions Work excluding Site Labor, in a fixed amount to be established in the GMP/Schedule Amendment (the "General Conditions Amount") payable on the percentage of completion of the Trade Work.

(c) Site Labor costs consisting of wages paid for laborers, operators, foremen, teamsters, shop stewards, mechanics and other similar workers employed by the Construction Manager in accordance with applicable collective bargaining agreements and prevailing wage rates, including all fringe benefits and contributions as may be payable with respect thereto, for properly documented time, and costs of contributions, assessments or taxes for unemployment compensation, social security, disability and similar benefits, to the extent such costs are based on wages paid to employees performing Site Labor.

(d) Premiums for insurance that the Construction Manager is required to purchase and maintain under this Agreement, supported by calculations and documentation

demonstrating that the Construction Manager's charges for insurance premiums reflect actual direct costs properly attributable to the Project without markups.

(e) Premiums for payment and performance bonds that the Construction Manager is required to provide under the Agreement.

7.2.2 The Contingency included in the GMP shall be available to cover Costs of the Work made necessary by field conditions, changed conditions not covered by equitable adjustment under Section 10.7 of this Agreement, changes that do not increase the scope of the Project and other Costs of the Work (excluding any costs described in Article VIII of this Agreement); provided, however, that the Contingency shall not be available to increase the General Conditions Amount. No cost greater than \$5,000.00 shall be considered a Cost of the Work if reimbursement to the Construction Manager would require use of the Contingency, unless the Construction Manager obtained the Owner's written approval of such use of the Contingency (not to be unreasonably withheld) before the cost was incurred. Subject to the limitations of the preceding sentence, the Contingency shall be available to the Construction Manager for (a) Work that is reasonably inferable from the Contract Documents but not included in initial Subcontract scopes; (b) unanticipated market and labor conditions; (c) overruns in the purchasing of Subcontracts; (d) implementation of construction schedule recovery plans for delays not covered by extension pursuant to Section 5.5 of this Agreement; (e) interfacing or coordinating omissions between and from various Subcontracts; (f) non-conforming work or performance by Subcontractors (but only to the extent costs are not recoverable from Subcontractors, Subcontractor bonds or other insurance or security and provided further that Punch List Work shall be part of the Subcontract scopes, to be performed by Subcontractors, and that costs of performing Punch List Work shall not be charged to the Contingency); and (g) other costs reimbursable pursuant to Section 7.1 of this Agreement that would otherwise cause overrun of the GMP. The Contingency is not for use by the Owner for scope increases, concealed existing conditions for which GMP adjustment is provided under Section 10.7, design changes or design deficiencies.

7.3 The aforesaid costs shall be requisitioned as provided in Article XI of this Agreement.

7.4 The Costs of the Work shall be credited with all rebates, refunds, trade discounts, credits on taxes, and credits realized on cash deposits or insurance premiums applicable to the Project. The Construction Manager shall take such steps as are reasonably necessary and appropriate to obtain such rebates, refunds, discounts and credits; provided, however, that the Construction Manager shall not be required to utilize its own funds to secure such discounts, rebates and credits.

7.5 The Construction Manager shall monitor the delivery of all tools, supplies, materials and equipment purchased for and delivered to the Project Site and maintain an inventory of all such items on a continuing basis for the Owner's review. All tools, supplies, materials or equipment purchased as part of the Costs of the Work by the Construction Manager shall be transferred to the Owner at the completion of the Work (except to the extent that they were consumed in performance of the Work).

ARTICLE VIII
(Costs Not to be Reimbursed)

8.1 The Costs of the Work as defined in Article VII of this Agreement shall not include the following costs and any other costs that are not reimbursable under the Statement of Policy (to the extent applicable), all of which are covered by the Construction Fee (as defined in Section 9.1 of this Agreement), and are not reimbursable and are not acceptable as Costs of the Work:

8.1.1 Costs of performing pre-construction services.

8.1.2 General operating expenses of the Construction Manager's home office and branch offices, other than the Construction Manager's office at the Project Site, including overhead and general expenses, except to the extent expressly identified in Section 7.2 of this Agreement or otherwise agreed to by the Owner in writing, and corporate franchise and income taxes.

8.1.3 Expenses relating to the Construction Manager's home office executives, estimating, legal, contract administration, purchasing (except on-Site personnel performing purchasing functions) and design development staff, except to the extent listed in Exhibit C or the GMP/Schedule Amendment and covered by Section 7.2.1(b) of this Agreement or otherwise approved in advance in writing and in each case by the Owner.

8.1.4 Losses and expenses covered by the insurance Construction Manager is required to procure and maintain under Article XII of this Agreement. If the Construction Manager fails to procure or maintain any insurance required by the Contract Documents and as a result there are insufficient insurance proceeds to cover any losses, the Construction Manager agrees that it shall bear such losses and expenses and they shall not be included in the Costs of the Work.

8.1.5 Costs of the Work that, together with the Construction Fee, exceed the GMP.

8.1.6 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

8.1.7 Costs attributable to breach of the Contract Documents, negligence or willful misconduct by the Construction Manager or any Subcontractor or sub-subcontractor of any tier or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable; except that (subject to the GMP) costs incurred by the Construction Manager to correct breach of the Contract Documents by a Subcontractor shall be reimbursable from Contingency to the extent that they cannot be backcharged to the responsible Subcontractor or recovered from a surety, insurer or other person and provided that they do not result from breach of the Contract Documents by the Construction Manager or gross negligence or willful misconduct of the Construction Manager.

8.1.8 Fines and penalties attributable to fault on the part of Construction Manager or any of its Subcontractors.

8.1.9 The cost of any item not specifically and expressly included in the items described in the subparagraphs of Section 7.2.1 of this Agreement or the GMP/Schedule Amendment.

ARTICLE IX (Construction Fee)

9.1 For construction of the Project, the Owner shall pay to the Construction Manager, in addition to payments on account of the Costs of the Work, the fixed fee (the "Construction Fee") set forth in the GMP/Schedule Amendment for the Project. The Construction Fee shall be adjusted in the manner specified in Section 10.2 of this Agreement for changes in the Work.

9.2 The Construction Fee shall be paid in monthly installments, based on the percentage of completion of the Work. Payment of the Construction Fee shall not be subject to retention.

ARTICLE X (Changes in the Work and Change Orders)

10.1 The Owner may, from time to time, by written instructions or drawings, order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions to the Work. The Construction Manager shall give written notice of any claim for increase in the GMP or extension of the time for completion of the Work on account of any change as provided in Article XV of this Agreement.

10.2.1 In the event of a change in the Work resulting in an increase or decrease in the Costs of the Work, the GMP shall be adjusted on account of demonstrable Trade Work Costs directly attributable to the change in the Work, determined in accordance with Section 10.2.3, plus an adjustment of the GMP as provided in Section 10.2.2 of this Agreement for General Conditions Work Costs. In addition, the Construction Fee shall be adjusted by negotiated fixed amount not to exceed _____ percent (_____%) of the adjustment in the Costs of the Work (sum of the adjustment of Trade Work Costs and the adjustment of the General Conditions Work Costs) and the GMP shall be adjusted to cover any increase in the Construction Fee.

10.2.2 Demonstrable increased General Conditions Work Costs attributable to a change. Such adjustment shall cover all General Conditions Work Costs associated with or resulting from the change (including, without limitation, any increased insurance premiums).

10.2.3 The Owner shall have the right to select the method of pricing to be used by a Subcontractor in pricing any change. The options will be (a) lump sum, (b) unit price and (c) cost plus, as defined by the following provisions:

10.2.3.1 Lump Sum. The Subcontractor will submit a properly itemized lump sum change order proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material and equipment in a detailed format satisfactory to the Owner. Itemized calculations will be required on all change order proposals from the Subcontractors and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item by drawing as applicable).

Labor. Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Subcontractor for those workers or crews of workers that the Subcontractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workers and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the markup percentages as outlined herein.

Labor Burden. Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employers for workers' compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Subcontractors shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to Federal and State payroll taxes.

Material. Estimated material change order costs shall reflect the Subcontractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Subcontractor due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material purchased for change order work shall be credited to the Owner if the Subcontractor is provided Owner funds in time for the Subcontractor to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

Equipment. Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be seventy-five percent (75%) of the monthly rate listed in the most current publication of The AED Green Book applicable to the work site divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to fifty percent (50%) of the

fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

10.2.3.2 Maximum Markup Percentage Allowable on Self-Performed Work.

With respect to pricing change orders and unless noted otherwise in the Subcontract, the maximum markup percentage fee to be paid to any Subcontractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%), which includes ten percent (10%) for all overhead costs and five percent (5%) for profit of the net direct cost of (a) direct labor and allowable labor burden costs applicable to the change order or extra work; (b) the net cost of material and installed equipment incorporated into the change or extra work, and (c) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.

10.2.3.3 Maximum Markup Percentages Allowable on Work Performed by Lower Tier Subcontractors. With respect to pricing the portion of change order proposals involving work performed by lower tier Subcontractors, and unless noted otherwise in the Subcontract, the maximum markup percentage fee allowable to the Subcontractor shall not exceed five percent (5%).

10.2.3.4 Sales and use tax (if applicable) shall not be subject to any markup percentage fee. Any sales or use tax properly payable by the Contractors shall be added, after computing the change order amount before tax.

10.2.3.5 As a further clarification, the agreed upon markup percentage fee is intended to cover the Subcontractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the markup percentage fee include, but are not limited to: home office expenses, branch office, warehouse costs and field office overhead expense of any kind; project management; superintendents, general foremen; estimating; engineering; coordination; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; insurance costs of any kind including comprehensive general liability insurance; workers compensation auto insurance and umbrella insurance; bond costs; material handling costs, safety costs and pick-up truck costs. The cost for the use of small tools is also to be considered covered by the markup percentage fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual value of \$750 or less.

10.2.3.6 The application of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders. In the case of a deductive change order, after the net credit is computed by applying the markup percentages as outlined, an adjustment will be made to the computed credit by multiplying the credit amount by a factor of .975 to arrive at a final credit amount to be issued to the Owner. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.

10.2.3.7 In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in Subcontractor change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to accomplish the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.

10.2.3.8 Unit Price. The Owner may choose the option to use unit prices. Quantities must be itemized in relation to each specific contract drawing. Unit prices will be applied to net differences of quantities of the same item. Unit prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the Subcontractor's markup percentage fee.

10.2.3.9 Cost Plus. The Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Subcontractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant fabrication), plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing lump sum change proposals as above. The Owner may agree in advance in writing on a maximum price for this work and the Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all of the Subcontractor's employees working on the Project will be required to be submitted to the Owner for both labor and equipment used by the Subcontractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Subcontractor's employees showing both base contract work as well as extra work performed by each employee.

10.3 The GMP shall not be increased on account of costs covered by the Contingency as provided in Section 7.2.2 of this Agreement.

10.4 A "Change Order" is (a) a written instrument signed by the Owner and Construction Manager stating their agreement on adjustment of the GMP, Construction Fee and/or the Contract Time, resulting from a change in the Work or any other cause; or (b) a written instrument signed by the Owner directing the Construction Manager to proceed with a change in the Work prior to agreement on any adjustment of the GMP, Construction Fee and/or Contract Time. In the case of a Change Order issued pursuant to subparagraph (b) of this Section 10.4, the adjustment to the GMP shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Cost of the Work, a reasonable allowance for Subcontractor general conditions, insurance overhead and profit as provided in Section 10.2. In such case, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Adjustment of the Construction Fee and Contract Time for completion of the Work as a result of the Change Order shall be in accordance with the applicable provisions of this Agreement. Pending final determination of the

amount or length of any such adjustment, amounts not in dispute for a change in the Work shall be paid to the Construction Manager in accordance with Article XI.

10.5 The Construction Manager shall proceed with any change ordered in accordance with this Article X.

10.6 The Construction Manager shall require any Subcontractor performing a change in the Work without final adjustment of its Subcontract price to furnish the Construction Manager daily an original and one copy of a written report signed by the Subcontractor's representative at the Project Site showing (a) the number of workers engaged in performing such change, the number of hours each such worker devoted thereto and a description of the specific work performed; and (b) the nature and quantity of all materials and equipment furnished or used in connection with the performance of such work. The Construction Manager shall verify the information contained in such reports on a daily basis as the work is performed. The Construction Manager shall furnish copies of such reports to the Owner upon the Owner's request. Failure of the Construction Manager and Subcontractor to comply strictly with this requirement shall constitute a waiver of any and all claims for adjustment in the GMP and Subcontract price on account of such change.

10.7 If conditions are encountered at the Project that are (a) subsurface or otherwise concealed conditions that differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist or generally recognized as inherent in construction of the character provided for in the Contract Documents, then the Construction Manager shall give written notice of such conditions to the Owner promptly and before such conditions are disturbed and await instructions from the Owner before proceeding with any affected Work. The Construction Manager shall give written notice of any claim on account of such conditions as provided in Article XV of this Agreement. Except for field coordination conditions not requiring structural redesign (which are to be covered by Contingency, as provided in Section 7.2.2 of this Agreement), the GMP shall be adjusted on account of demonstrable Costs of the Trade Work directly attributable to such conditions, plus adjustment for General Conditions Work Costs directly attributable to such conditions on the same basis as provided in Section 10.2.2 of this Agreement, plus adjustment of the Construction Fee by a negotiated fixed amount not to exceed _____ percent (____%) of the sum of the adjustment in the Costs of the Trade Work and the Costs of the General Conditions Work. In addition, the Contract Time shall be adjusted on account of delay due to such conditions, as provided in Section 5.5 of this Agreement.

ARTICLE XI (Payments)

11.1 The Construction Manager shall requisition for payment in conformance with the requirements of the Owner and generally in accordance with the following:

11.1.1 On or about the last day of each month, the Construction Manager shall submit to the Owner (with copies to the Architect and the Owner's auditor, if any) a requisition for payment ("Requisition") in a format approved by the Owner (AIA Document G702 or

similar) for Work performed during the month, covering and including (a) installment of the Preconstruction Fee; (b) Costs of the Work incurred by the Construction Manager; (c) installment of the Construction Fee; (d) amounts requisitioned by and paid to the Construction Manager prior to the date of the current Requisition; (e) the amount requested pursuant to the current Requisition, including adjustments for retention; and (f) any adjustments to the GMP. After the start of construction, the Construction Manager shall submit a pencil copy of the Requisition prior to submission in final form and subject to adjustment based on a walkthrough at the Project Site by representatives of the Construction Manager, Owner and Architect.

11.1.2 The Preconstruction Fee shall be paid in equal monthly installments based on the anticipated duration of the preconstruction services; provided, however, that if such services are delayed, the unpaid balance of the Preconstruction Fee will be divided by the anticipated number of months remaining until completion of such services to determine an adjusted monthly installment amount.

11.1.3 For compensation of the Construction Manager's personnel, each Requisition shall attach a labor distribution report and payroll register (certified by the Construction Manager to be correct) identifying individual charges including hours for the Project covered by the Requisition. Each Requisition also shall attach supporting documentation including timesheets showing the time properly charged by all reimbursable personnel, accurate payroll reports showing compensation paid to reimbursable personnel, a schedule of approved salary rates and current wages and benefits for all personnel and workers, notification to and approval by the Owner of adjustments to rates set forth in Exhibit C hereto and collective bargaining agreements or other documents (or excerpts therefrom acceptable to the Owner) documenting the current union wages and benefits or prevailing wage rates and a certification by the Construction Manager that such information is accurate. Each salaried employee must prepare his or her own timesheet and all timesheets must be approved by a manager/supervisor and must indicate hours charged to the Project, and the Construction Manager shall provide hard copies of such approvals as requested by the Owner. Union foremen or supervisors shall prepare timesheets for union personnel. Changes to timesheets must be initialed and dated by a manager/supervisor or otherwise similarly approved electronically.

11.1.4 In the event that the Project is covered by prevailing wage requirements, each Requisition shall be accompanied by certified payroll reports from the Construction Manager and Subcontractors documenting compliance with such requirements.

11.1.5 For materials purchased by the Construction Manager as part of the General Conditions Work, each Requisition shall attach supporting invoices noting the Project, the specific materials delivered and the price.

11.1.6 For other General Conditions Work expenses and petty cash payments, each Requisition shall attach supporting expense reports and receipts signed by the employee and approved by appropriate Construction Manager personnel.

11.1.7 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and

suitably stored at the Site. If approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the Project Site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the Project Site for those materials and equipment stored off the Site.

11.1.8 Each Requisition shall contain a schedule setting forth all Subcontractors requesting payment, and shall be accompanied by properly and fully executed partial releases and lien waivers, the form of which is subject to the Owner's approval and, as to any Requisition requesting final payment, a "Final Payment Certificate" and "Release and Lien Waiver," in the forms annexed hereto as Exhibit F or such other forms as the Owner may approve or require, by the Construction Manager and each Subcontractor, of any lien or right to file a lien against the Work and the real estate comprising the Site for any services or Work performed or materials furnished by the Construction Manager or any Subcontractor, up to and including the date for which payments have been made. Each Requisition shall include a certification by the Construction Manager of the amounts due to the Subcontractors covered by the Requisition and such certification shall constitute the Construction Manager's representation to the Owner that the Subcontractors' Work has progressed at least to the point indicated, that the Work is in accordance with the Contract Documents and that the amounts certified are properly due.

11.1.9 Each Requisition covering Subcontract Work shall include Subcontractor requisitions setting forth calculations of the amounts requested for Subcontractors based on the approved trade payment breakdowns.

11.1.10 The Construction Manager shall require each Subcontractor's requisition to show:

- (a) The amounts paid to the Subcontractor prior to the date of the current requisition.
- (b) The amount being requested pursuant to the current requisition, including adjustment for retention pursuant to Section 11.1.13 of this Agreement.
- (c) The balance payable under the Subcontract after payment is made pursuant to the current requisition.
- (d) Any additions to and subtractions from the original Subcontract price.
- (e) For each portion of the Subcontractor's Work, the percentage completed.
- (f) Such other documentation and information as may be reasonably required by the Owner.

11.1.11 The Construction Manager warrants that title to all Work, materials and equipment covered by a Requisition will pass to the Owner either by incorporation in the construction or upon receipt of payment by the Construction Manager (net of retention), whichever occurs first, free and clear of all liens, claims, security interests or encumbrances other than any lien permitted under the New York Lien Law; and that, subject to receipt of payment thereunder, no Work covered by a Requisition will be subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or any Subcontractor or other person.

11.1.12 Each Requisition is subject to written certification by the Architect and written approval by the Owner prior to payment. Certification by the Architect and approval and payment by the Owner may be withheld, in whole or in part, to protect the Owner from loss because of:

(a) unsatisfactory or disputed job progress not remedied within twenty (20) days after written notice;

(b) defective Work not remedied;

(c) value of disputed work;

(d) failure to comply with other material provisions of the Contract Documents;

(e) failure of the Construction Manager to make timely payments to Subcontractors for labor including fringe benefit contributions and payroll taxes, insurance, equipment and materials in accordance with the Subcontracts and provided that the Construction Manager's failure is not due to the Owner's breach of its obligations to pay Construction Manager in accordance with the Contract Documents;

(f) damage to property of the Owner; or

(g) with respect to withholding of approval or payment by the Owner, failure of the Architect to certify payment for any or all of the reasons set forth in this Section 11.1.12 (so long as the reasons are included in the Owner's written statement of disapproval pursuant to this Section).

The Owner shall approve or disapprove all or a portion of a Requisition within twelve (12) business days. If the Owner disapproves a Requisition or a portion thereof, or withholds payment after initial approval, the Owner shall prepare and promptly issue to the Construction Manager a written statement describing those items in the Requisition for which approval or payment is withheld. When the grounds for withholding approval or payment are removed, payment shall be made for amounts withheld on account of such grounds. The Owner may withhold from an interim payment only an amount that is sufficient to pay the costs and expenses the Owner reasonably expects to incur in order to cure the defect or correct any items set forth in writing pursuant to this Section 11.1.12.

11.1.13 All amounts payable by the Construction Manager to Subcontractors shall be subject to retention, which shall be, unless such other amount is specifically approved in writing by the Owner, not less at any time than ten percent (10%) of the gross amount earned by Subcontractors for Trade Work for the first fifty percent (50%) of the Trade Work, as verified by the Owner and Architect. Thereafter, no additional retention shall be withheld, the intent being that the total retention on account of the Trade Work shall be equal to five percent (5%) at final completion of the Work. Retention shall be reduced upon Substantial Completion to an amount equal to twice the reasonably estimated value of the uncompleted Punch List Work.

11.1.14 Reimbursement of General Conditions Work Costs shall not be subject to retention.

11.1.15 No payments will be made on account of any Subcontractor without: (a) a fully executed Subcontract, (b) evidence by certificate or endorsement that the Subcontractor's insurance coverage is in full effect for the types of coverage and with limits, additional insureds and all other requirements as set forth in the Subcontract and (c) for any Subcontractor required to furnish payment and performance bonds, evidence that the bonds, from an approved surety and otherwise acceptable to the Owner, are complete in all respects including dual obligee rider. In addition, no payment will be made to the Construction Manager if the Construction Manager has not provided evidence that the Construction Manager's own insurance is in full effect.

11.2 Within thirty (30) days after the Owner's approval of a Requisition or as otherwise provided by law, and subject to the Owner's right to withhold payment under Section 11.1.12 of this Agreement, the Owner shall pay to the Construction Manager the approved amounts on account of (a) the monthly installment of the Preconstruction Fee, (b) the Costs of the Work incurred by the Construction Manager as provided in Section 11.1.1 of this Agreement, less retention and (c) the monthly installment of the Construction Fee. The Construction Manager shall deposit payments in a separate bank account for disbursement of such amounts, and shall credit the Owner with all interest earned on such account on a monthly basis. The Construction Manager shall make payment to all Subcontractors, within seven (7) days of receipt of payment from the Owner, of all amounts received by the Owner on account of Subcontractors except to the extent of any withholding by the Construction Manager authorized by the Owner in writing.

11.3 If the Owner should fail to approve or disapprove a Requisition within the time limit established in Section 11.1.12 of this Agreement, or to pay an approved amount to the Construction Manager within the time limit established in Section 11.2 of this Agreement (except to the extent that payment may be withheld pursuant to Section 11.1.12), the Construction Manager may suspend the Work until payment of the amount owing has been received after providing the Owner written notice and an opportunity to cure at least five (5) days before the intended suspension. The Contract Time shall be extended on account of such suspension as provided in Section 5.5 of this Agreement and the GMP shall be increased by the amount of the Construction Manager's reasonable increased Costs of the Work attributable to shut-down, delay and start-up because of such suspension. Such notice shall (a) inform the

Owner that payment of undisputed amounts has not been received, and (b) state the intent of the Construction Manager to suspend the Work for non-payment.

ARTICLE XII (Insurance)

12.1 The Construction Manager and all Subcontractors and sub-subcontractors of any tier shall procure and maintain at all times during performance of the Work and until completion of the Work or its final acceptance, whichever is later (and for at least three (3) years thereafter for Commercial General Liability/completed operations coverage), for their benefit and the benefit of the Owner and New York University, New York University Medical Center Condominium and such other persons as the Owner may designate (with the Construction Manager's approval, not to be unreasonably withheld), insurance for the Work in accordance with the Insurance Specifications, as defined in Section 12.6 of this Agreement. Neither the Construction Manager nor any Subcontractor or sub-subcontractor of any tier shall commence Work before obtaining, with companies reasonably satisfactory to the Owner's Director of Insurance, all of the insurance hereinafter set forth.

12.2 The Insurance Specifications herein shall apply fully to the Construction Manager and to Subcontractors and sub-subcontractors of any tier; provided, however, that for each Subcontractor and sub-subcontractor the limits of their Commercial General Liability Insurance for both bodily injury and property damage shall not be less than \$3,000,000 combined single limit or, in the alternative, \$3,000,000/\$3,000,000 per occurrence/aggregate (except that the combined single limit or per occurrence/aggregate minimums shall be \$10,000,000 for each of the excavation, foundations, site work, steel, concrete, electrical, elevator/escalator, HVAC, masonry and plumbing Subcontractors and sub-subcontractors and \$5,000,000 for each of the fire protection, roofing and waterproofing, carpentry and pointing Subcontractors and sub-subcontractors. The Construction Manager shall not allow Work to be commenced by any Subcontractor or sub-subcontractor of any tier until the insurance required of the Subcontractor or sub-subcontractor has been obtained and approved by the Owner's Director of Insurance.

12.3.1 At least five (5) business days prior to the commencement of any Work, the Construction Manager shall deliver to the Owner's Director of Insurance certificates of insurance evidencing the procurement of the insurance required of the Construction Manager under this Agreement. The Construction Manager shall deliver certificates of insurance on behalf of each Subcontractor and sub-subcontractor required to provide insurance hereunder to the Owner's Director of Insurance at least five (5) business days prior to the commencement of Work by the Subcontractor or sub-subcontractor. These certificates shall show the type, amount and class of operations covered, as well as the effective dates and expiration dates of the various insurance policies and will name the Construction Manager and Owner as certificate holder. Each certificate shall be accompanied by copies of CG 20 26 07 04, CG 20 10 07 04, CG 20 37 07 04 or equivalent endorsement. The Construction Manager and each Subcontractor and sub-subcontractor of any tier, upon request by the Owner, shall deliver to the Owner's Director of Insurance, upon request, copies of all required policy endorsements. The Construction Manager shall make its full policies of insurance required under this Agreement available to the Owner for inspection, upon request, and shall require each Subcontractor and sub-subcontractor of any tier,

upon request, to make copies of its required policies of insurance available to the Owner for inspection.

12.3.2 The Commercial General Liability Insurance and Comprehensive Automobile Insurance (a) shall be endorsed to include the Owner, New York University and New York University Medical Center Condominium as additional insureds in connection with the Work; (b) shall not require payment of premium by any additional insured; and (c) shall provide that the insurance will not be cancelled without at least thirty (30) days' prior written notice thereof to the Owner's Director of Insurance.

12.3.3 With respect to the Commercial General Liability Insurance and Comprehensive Automobile Insurance, the Construction Manager (and any Subcontractor and sub-subcontractor required to provide such insurance) (a) shall cause any other person with an insurable interest (excluding architects, engineers and other design professionals) to be named as an additional insured upon the Owner's request; (b) shall give written notice to each insurer, on behalf of the Construction Manager and the additional insureds, of any claim, suit, proceeding or occurrence resulting from, arising out of or occurring in connection with the Work, and shall send a copy of each such notice to the Owner; and (c) shall not make any alteration to any policy that would cause the policy not to comply with any requirement of this Agreement.

12.3.4 If during the period of time referred to in Section 12.1 of this Agreement any of the insurance required of the Construction Manager shall expire or be altered in any material respect, the Construction Manager shall immediately advise the Owner's Director of Insurance, in writing, of such expiration or alteration, such policy shall be immediately renewed, with the previous limits and conditions, and such policy shall be maintained in effect for the duration of such period. The Construction Manager shall require each Subcontractor and sub-subcontractor of any tier to be bound by similar requirements and, as a condition to payment to each Subcontractor, shall require current evidence that such insurance is in place. The Construction Manager shall not release payment to a Subcontractor without such evidence.

12.3.5 The Owner shall not be responsible for payment of the premiums of the required insurance except to the extent that such premiums are reimbursable to the Construction Manager as part of the Costs of the Work. By carrying the required insurance, neither the Construction Manager nor any Subcontractor or sub-subcontractor shall be relieved of any responsibility whatever and each may, at its own expense, carry such additional insurance as it deems necessary.

12.3.6 The Owner at any time before the start of Work in the field may determine to provide the Commercial General Liability Insurance, Workers' Compensation Insurance and Employer's Liability Insurance required under Sections 12.6.1, 12.6.2 and 12.6.3 of this Agreement through an Owner-Controlled Insurance Program ("OCIP") including coverage for the Construction Manager, Subcontractors and sub-subcontractors. If requested to do so by the Owner, the Construction Manager shall seek competitive bids from prospective Subcontractors containing alternate pricing with and without insurance as provided in Sections 12.6.1, 12.6.2 and 12.6.3 of this Agreement. If the Owner determines to proceed with an OCIP, the OCIP coverage shall apply to Work performed after the OCIP coverage takes effect, as provided under

the terms of the OCIP, and Subcontracts and the Costs of the Work shall exclude the cost of providing the Commercial General Liability Insurance, Workers' Compensation Insurance and Employer's Liability Insurance required under Sections 12.6.1, 12.6.2 and 12.6.3 of this Agreement after such date, to the extent that such coverage is provided under the OCIP.

12.4.1 The Owner shall procure and maintain, at its cost and expense, all risk builder's risk property insurance for the full replacement value of the Work and all materials, equipment, machinery and supplies at the Site (excluding, in addition to other standard exclusions, equipment and machinery, tools and property of a similar nature not destined to become a permanent part of the completed structure). The Owner also shall provide such coverage for materials, equipment, machinery and supplies destined to become a permanent part of the completed structure that are properly stored off-Site, where title has been transferred to the Owner and subject to the Owner's prior written approval; provided, however, that at the Owner's request the Construction Manager shall provide such off-Site coverage (the premium cost of which shall be reimbursable). Such insurance shall insure against at least the perils of fire, theft, vandalism and malicious mischief, transit, collapse, earthquake and flood and shall include the Construction Manager, Subcontractors, and sub-subcontractors of any tier as additional insureds. The Construction Manager shall be given thirty (30) days' notice of cancellation. The insurance may contain a per occurrence deductible, in an amount as elected by the Owner, and the Owner shall be responsible for insured losses to the extent of such deductible. The Construction Manager shall be notified of the deductible prior to the start of the Project and will be given a certificate of insurance when so requested and opportunity to review a copy of the policy for such insurance at the office of the Owner's Director of Insurance.

12.4.2 The Owner, Construction Manager, Subcontractors and sub-subcontractors of any tier each hereby waives, and shall hereafter waive, all rights against each other, with respect to damages (whether or not due to the negligence of any such party) caused by fire or other perils covered by insurance provided pursuant to Section 12.4.1 of this Agreement. The builder's risk policy will include a waiver of subrogation stating that the carrier waives its rights of subrogation against the Owner, Construction Manager, Subcontractors and sub-subcontractors of every tier.

12.5 The Construction Manager and each Subcontractor and sub-subcontractor of any tier shall assist and cooperate in whatever manner possible in connection with the adjustment of all claims arising out of the Work and shall cooperate with the insurance carrier or carriers in all claims and demands that they are called upon to adjust.

12.6 The following specifications ("Insurance Specifications") shall apply to the Project:

12.6.1 Commercial General Liability and Follow Form Excess Liability insurance in the amount of at least \$[] for personal injury, bodily injury or death resulting therefrom, and property damage (broad form) for each occurrence and in the annual aggregate. The policies providing such insurance shall include Contractual Liability coverage. In addition, such policies shall provide the following coverages:

- (a) Premises - operations liability;
- (b) Occurrence bodily injury and property damage liability;
- (c) Independent contractors' liability;
- (d) Completed operations and products liability;
- (e) Blanket contractual liability;
- (f) Personal injury liability insurance hazards A, B, C, with employee exclusion (c) deleted;
- (g) Broad form property damage liability (including completed operations); and
- (h) X, C and U endorsement.

Such insurance shall include a waiver of subrogation substantially as follows:

It is agreed that in no event shall this insurance company have any right of recovery against NYU Hospitals Center, New York University, New York University Medical Center Condominium or such other persons as NYU Hospitals Center may designate.

Such insurance shall provide that bodily injury to any person, including employees, arising out of or in connection with the Work, occurring at any work site shall be deemed to be bodily injury arising out of or in connection with the Work. Such insurance also shall provide that the coverage thereunder shall be considered primary to any other similar coverage carried by or for the benefit of the Owner or any additional insured.

12.6.2 Workers' Compensation insurance to statutory limits, as required by the New York State Workers' Compensation Law and any other applicable law, with respect to all employees to be engaged in the performance of the Work.

12.6.3 Employer's Liability insurance in an amount not less than \$1,000,000 for each occurrence for all employees engaged in the performance of the Work. Should any class of employees engaged in the performance of the Work not be protected under the Workers' Compensation Law, the Construction Manager and each Subcontractor and sub-subcontractor of any tier shall procure adequate Employer's Liability insurance for the protection of all such employees who are not otherwise protected. The Construction Manager and each Subcontractor and sub-subcontractor of any tier performing Work at the Site shall procure and maintain statutory Disability and Unemployment insurance for all of their employees engaged in the performance of the Work.

12.6.4 Automobile Liability insurance in an amount not less than \$2,000,000 for bodily injury or death resulting therefrom, and property damage in an amount not less than \$2,000,000 for each occurrence. This insurance shall apply to all owned, non-owned, leased or hired vehicles used by the Construction Manager and each Subcontractor and sub-subcontractor of any tier or their employees in furtherance of the Work. If automobiles are provided to any employees of the Construction Manager in connection with the Project, then insurance on those automobiles shall be the responsibility of the Construction Manager or the employee.

12.6.5 Professional Liability/Contractor's Pollution Liability Insurance in the amount of at least \$[]. Such insurance shall be continued in effect for at least three (3) years following completion of the Work.

12.6.6 The Construction Manager and each Subcontractor and sub-subcontractor of any tier shall secure, pay for and maintain whatever fire or extended coverage or other property insurance each may deem necessary for protection against loss of or damage to owned or rented capital equipment, tools, other equipment, scaffolding, staging, towers and forms, hoists and other items to be used by the Construction Manager or its Subcontractors or sub-subcontractors of any tier in the performance of the Work; provided, however, that whether or not any such insurance is obtained it is agreed that the Owner shall have absolutely no liability whatsoever with respect to loss of, theft of or damage to any such equipment, tools and other items. Failure of the Construction Manager or any Subcontractor or sub-subcontractor of any tier to secure such insurance or to maintain adequate levels of coverage shall not in any way obligate the Owner or its employees, agents or representatives for any loss of or damage to any of the aforesaid owned or rented equipment, tools and other items. If the Construction Manager or any Subcontractor or sub-subcontractor of any tier secures such insurance, the insurance policy shall include a waiver of subrogation substantially as follows:

It is agreed that in no event shall this insurance company have any right of recovery against NYU Hospitals Center, New York University, New York University Medical Center Condominium or such other persons as NYU Hospitals Center may designate.

With respect to such insurance secured by any Subcontractor or sub-subcontractor, such waiver of subrogation shall cover the Owner, New York University and New York University Medical Center Condominium and such other persons as the Owner may designate, and the Construction Manager.

ARTICLE XIII (Liens and Other Encumbrances)

13.1 If any lien or encumbrance is filed against the Project by a Subcontractor or anyone claiming through any Subcontractor, the Construction Manager shall, upon receiving notice of such filing, immediately give notice thereof to the Owner and, provided the Owner is making payments to the Construction Manager in accordance with the terms of this Agreement, (a) direct the responsible Subcontractor or anyone claiming through the Subcontractor to discharge the lien of record by bonding or otherwise, (b) direct the responsible Subcontractor to

take such further action as the Owner may request, (c) withhold from payments thereafter to be made to the Subcontractor that has suffered or permitted such lien or encumbrance to be filed such amounts as are permitted to be withheld under the provisions of the applicable Subcontract until said lien or encumbrance has been discharged of record or (d) discharge the lien itself. Such action shall be taken promptly and before any further payment shall be due to the Construction Manager.

**ARTICLE XIV
(Proceeding With the Work)**

14.1 The Construction Manager shall proceed with the Work promptly as instructed, directed or ordered by the Owner regardless of any dispute. The Construction Manager shall have no right to suspend all or any part of the Work or to refuse to comply with any written instruction, direction or order of the Owner pending resolution of any dispute or for any other reason, provided that the Owner continues to make payments of undisputed amounts as provided in this Agreement. Any such suspension or refusal will be a material breach of this Agreement. The Construction Manager may preserve whatever right, if any, the Construction Manager may have to make claim with respect to any written instruction, direction, order, action or inaction of the Owner, Architect or others by giving notice as required by Article XV of this Agreement and by advising the Owner in writing, prior to proceeding with the Work in question, that the Construction Manager is proceeding under protest.

**ARTICLE XV
(Notice of Claim)**

15.1 The Construction Manager must give written notice to the Owner of any claim by the Construction Manager for extension of time, extra compensation, increase to the GMP or damages of any sort within seven (7) calendar days after the Construction Manager first learns of the act, omission, occurrence or circumstance on which the claim is based. The purpose of this notice is to give the Owner prompt opportunity: (a) to cancel or revise orders or directions, change plans, mitigate or remedy circumstances giving rise to the claim or to take other action that may be desirable; (b) to monitor and verify the facts and circumstances as they occur; and (c) to verify any costs and expenses claimed by the Construction Manager contemporaneously as they are incurred. Written notice is required whether or not the Owner or Architect is aware of the facts or circumstances that constitute the basis for the Construction Manager's claim, and no action or conduct of the Owner, Architect or any other person will be regarded as a waiver of such notice requirement except only a written statement to such effect signed by the Owner. Failure of the Construction Manager to give written notice as required shall be deemed conclusively to be a waiver and release of any claim, and such notice shall be a condition precedent to the Construction Manager's right to make any claim arising out of, under or in connection with this Agreement or its performance of the Work.

15.2 Notice pursuant to this Article XV shall be addressed and sent to the Owner in accordance with Section 23.3 of this Agreement. Notice of claim given to the Architect or any other person engaged by the Owner shall not constitute notice to the Owner.

15.3 The Construction Manager also shall furnish the Owner with copies of all written notices and documentation of claims submitted by Subcontractors to the Construction Manager, within ten (10) days after receipt by the Construction Manager.

15.4 In addition to giving notice pursuant to Section 15.1 of this Agreement, the Construction Manager shall comply with the following requirements:

15.4.1 If the Construction Manager or any Subcontractor is performing disputed work or otherwise complying under protest with any direction or order of the Owner, the Construction Manager shall furnish to the Owner daily a written report containing the same categories of information required under Section 10.6 of this Agreement covering the labor and materials furnished by the Construction Manager or Subcontractor as a result of such direction or order. Failure of the Construction Manager and Subcontractor to comply strictly with this requirement shall constitute a waiver of any and all claims for adjustment in the GMP and Subcontract price on account of such direction or order.

15.4.2 If the Construction Manager or any Subcontractor claims to have sustained damage by reason of any act, omission or circumstance for which the Owner is claimed to be responsible, the Construction Manager shall furnish to the Owner, not later than the fifteenth (15th) day of the month following that month during which any such damage shall have been sustained, an itemized written statement setting forth in detail the damages sustained by the Construction Manager or Subcontractor, together with copies of all documentary evidence of such damage then available. Failure of the Construction Manager and Subcontractor to comply strictly with this requirement shall constitute a waiver of any and all claims for adjustment in the GMP and Subcontract price on account of such direction or order.

15.5 The Owner shall review any claim by the Construction Manager and give the Construction Manager a written statement of its position regarding the claim within sixty (60) days after submission of the claim to the Owner, and in case the Owner fails to do so the Construction Manager may suspend the Work after giving the Owner ten (10) days' written notice and opportunity to cure such failure. When the Owner rejects a claim, the Owner's statement shall indicate whether the claim is rejected because of a dispute over the amount of the claimed compensation or because of a dispute over entitlement to compensation. The Owner and Construction Manager shall negotiate the amount of any claim that is rejected because of a dispute over amount but not entitlement, in a good faith effort to reach agreement on the amount of compensation for the claim.

ARTICLE XVI (Correction and Removal of Work)

16.1 The Construction Manager shall promptly remove from the Site all Work condemned by the Owner or Architect in writing as failing to conform to the Contract Documents, whether incorporated in the Project or not, and the Construction Manager shall promptly replace and re-execute the Work in accordance with the Contract Documents, without extension of the Contract Time, and bear the expense of making good all work of others destroyed, damaged or interfered with by such removal or replacement.

16.2 If the Construction Manager does not remove and replace and re-execute condemned Work within a reasonable time as determined by the Owner, then after seven (7) business days' written notice to the Construction Manager the Owner may have such removal and re-execution done by others and the GMP and amounts payable to the Construction Manager shall be reduced by the reasonable costs thereof.

ARTICLE XVII (Warranty)

17.1 The Construction Manager warrants all of the Work against defects and deficiencies in materials, equipment and workmanship for a period of: (a) one (1) year from the date of Substantial Completion of the Work of the Project, for Work performed by such date; and (b) one (1) year from the date the Work is performed, for Work performed after the date of Substantial Completion. The Construction Manager shall be responsible for all costs incurred in repairing or replacing any defective or deficient materials, equipment or workmanship, and any damage to other portions of the Work or other property resulting therefrom. This warranty and Section 17.1 of this Agreement in no way limit or restrict any other right or remedy the Owner may have under the Contract Documents or otherwise.

17.2 In the event that the Contract Documents require warranties running longer than provided in Section 17.1 of this Agreement, the Construction Manager shall procure such warranties from Subcontractors and provide or assign them to the Owner and shall assist the Owner in enforcing such warranties, provided, however, that the Owner shall bear the cost of prosecuting legal action against any Subcontractor if necessary to enforce any such warranty.

17.3 The Construction Manager's obligations under this Article XVII are in addition to all other elements of the Work and continue beyond final completion of the Work.

ARTICLE XVIII (Termination)

18.1 If the Work, in whole or substantial part, is stopped for a period of one hundred eighty (180) days through no act or fault of the Construction Manager, then the Construction Manager may terminate the Contract upon ten (10) days' prior written notice to the Owner, and the Construction Manager shall be entitled to receive the portion of the Preconstruction Fee earned through the date of such termination and (subject to the GMP) all authorized Costs of Work incurred by the Construction Manager through the date of such termination and thereafter directly as a result of such termination together with such installments of the applicable Construction Fee as may have become due and payable up to and including such termination date, less any amounts properly withheld on account of defective Work or otherwise.

18.2 If the Project is stopped for a period of sixty (60) days as a result of the Owner's failure to make payments properly due and payable under the Contract Documents, and if such stoppage is not attributable to any breach of the Contract Documents or any negligence by the Construction Manager or any Subcontractor or sub-subcontractor of any tier or anyone

directly or indirectly employed by any of them or for whose acts any of them may be liable, then the Construction Manager may give the Owner written notice of its intent to terminate the Agreement with respect to the Project and the reasons therefor, and, in the event such default is not cured within ten (10) days after receipt of such written notice, then the Construction Manager may terminate the Contract and shall be entitled to receive the portion of the Preconstruction Fee earned through the date of such termination and (subject to the GMP) all authorized Costs of Work incurred by the Construction Manager through the date of such termination and thereafter directly as a result of such termination together with such installments of the applicable Construction Fee as may have become due and payable up to and including such termination date, less any amounts properly withheld on account of defective Work or otherwise.

18.3 If the Construction Manager (a) shall be in default under any material provision of the Contract Documents and shall fail to cure such default within seven (7) days after receipt of notice from the Owner specifying the nature of such default (or, in the case of any default which cannot be cured with all due diligence within said seven (7) day period, within such longer period as may be necessary to cure such default with all due diligence provided that the Construction Manager has commenced curing such default within the seven (7) day period and thereafter with reasonable diligence and in good faith, diligently continues the curing of such default and completes the curing of such default within an additional thirty (30) day period), or (b) at any time prior to the completion of the Work, shall become insolvent, or commence a voluntary case under Title 11 of the United States Code (as now or hereinafter in effect), or apply for or consent to the appointment of, or the taking of possession by, a receiver, liquidator, custodian or trustee of the Construction Manager or of its property, or make a general assignment for the benefit of its creditors or file a petition seeking to take advantage of any state or federal insolvency law, provided such action or event shall effectively impair the ability of the Construction Manager to perform its obligations hereunder or (c) if a proceeding or case shall be commenced, without the application or consent of the Construction Manager, seeking its liquidation, reorganization or dissolution, or composition or readjustment of its debts, or the appointment of a trustee, receiver, liquidator, custodian or the like of the Construction Manager or of all or any substantial part of its assets, or similar relief in respect of the Construction Manager under any law relating to bankruptcy, insolvency or reorganization, or an order for relief shall be entered against the Construction Manager in an involuntary case under Title 11 of the United States Code and such proceeding, case or order shall not be vacated or set aside or stayed within sixty (60) days from the commencement or entry thereof, provided such action or event shall effectively impair the ability of the Construction Manager to perform its obligations hereunder; then, upon the occurrence of any of said events, the Owner may, without prejudice to any other right or remedy and after giving the Construction Manager three (3) days' written notice, terminate the Contract and take possession of the Project Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager and may finish the Work by whatever method the Owner may deem expedient. In such case the Construction Manager shall not be entitled to receive any further payment until the Work is finished. If the costs of finishing the Work exceed the unpaid balance of the GMP (earned or unearned) and any unpaid balance of the Preconstruction Fee, the Construction Manager shall pay the difference to the Owner promptly upon demand, and this obligation shall survive the termination of the Contract. If the unpaid balance of the GMP and any unpaid balance of the Preconstruction Fee exceeds the cost of finishing the Work, the Construction

Manager shall be entitled to receive payment for the Costs of the Work and Construction Fee and any unpaid balance of the Preconstruction Fee owing to it for Work performed through the date of termination, less any amounts properly withheld on account of defective work or otherwise, to the extent of such excess. The Construction Manager shall be responsible under this Section 18.3 for all amounts incurred by the Owner in good faith under the reasonable belief that they were necessary or required, and an itemized statement thereof shall be prima facie evidence of the Construction Manager's liability therefor.

18.4 The Owner may, at any time, terminate the Contract, or delete any portion of the Work from the Contract, for the Owner's convenience and without cause by giving the Construction Manager seven (7) days' written notice. In case of such termination or deletion, the Construction Manager shall be entitled to receive the portion of the Preconstruction Fee earned through the date of such termination and (subject to the GMP) all authorized Costs of the Work properly due and owing to the Construction Manager under the terms of this Agreement for Work performed through the date of such termination or deletion together with such installments of the Construction Fee as may have become due and payable through such date, less any amounts properly withheld on account of defective Work or otherwise.

ARTICLE XIX (Assignments)

19.1 This Agreement shall be binding upon and inure to the benefit of the Owner and Construction Manager and their respective successors and assigns, except that this Agreement may not be assigned by any party without the prior written consent of the other party. The Construction Manager hereby consents to (a) the collateral assignment of this Agreement to any lender for the Project, if such collateral assignment is required under the terms of a construction loan, provided such lender shall assume Owner's rights and obligations under the Contract Documents and (b) the Owner's assignment of this Agreement in the event of the Owner's sale of the Site and its interest in the Project (provided that the assignee is creditworthy and all payments due are current). Any assignment requiring consent under this Article XIX which is made without such prior written consent shall not vest any rights in the assignee and shall be void.

ARTICLE XX (Entire Agreement)

20.1 This Agreement, including all attachments hereto and all Contract Documents, constitutes the entire agreement and understanding of the parties and supersedes all prior written or oral agreements or understandings in respect to the subject matter hereof. Each party represents to the other that, except as set forth in this Agreement and the Contract Documents, neither the other party nor any representative of the other party has made any representation or promise not embodied in this Agreement upon which such party has relied.

20.2 This Agreement shall not be changed or modified, unless in a writing signed by the Owner and Construction Manager.

ARTICLE XXI
(Books and Records)

21.1 The Construction Manager's Project staff shall maintain a daily log of all on-Site operations and progress of the Work. The daily log for each day shall include, without limitation, a count of all workers on Site by Subcontractor (and such additional information as may be required by an OCIP, if implemented), the equipment in use, the Work performed, deliveries received and significant events affecting the Work. The Project staff also shall maintain correspondence, minutes of meetings, schedules and requisitions, accounting journals, bank records and cancelled checks, which shall be maintained at the Project office or the Construction Manager's home office and shall be available for inspection by the Owner and its authorized representatives.

21.2 The Construction Manager shall perform all accounting and bookkeeping services required to carry out the Work and to document the Construction Manager's Costs of the Work. This shall include, without limitation, processing of all Subcontractor requisitions and payroll and invoice processing for all labor and materials utilized by the Construction Manager in the performance of the Work.

21.3 Construction Manager's "records" as defined herein shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of six (6) years after final payment or longer if required by law.

(a) Construction Manager's "records" as referred to in this Contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, Subcontractor requisitions, invoices, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents. Such records shall include (hard copy, as well as electronic computer readable data if it can be made available): written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; files relating to Change Orders from the Owner and change orders from the Construction Manager to Subcontractor (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Construction Manager records which may have a bearing on matters of interest to the Owner in connection with the Construction Manager's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of (i) Construction Manager compliance with Contract requirements, (ii) compliance with the Owner's

business ethics policies and (iii) compliance with provisions for pricing and submitting Change Orders, Requisitions or claims submitted by the Construction Manager or its payees.

(b) The Construction Manager acknowledges its understanding that the Owner has a Business Ethics Policy, which provides that no Owner employees nor members of their family shall accept anything of value from contractors, suppliers, vendors or others transacting or seeking to transact business with the Owner. The offering or giving of such items of value by the Construction Manager, whether or not made with intent to obtain special consideration, shall be deemed a material breach of contract entitling Owner to cancel any contracts with Construction Manager.

21.4 The Construction Manager understands and agrees that in the event of any billing adjustments in respect to amounts previously paid to the Construction Manager from the Owner as a result of the Owner's (or its representatives') inspection or audit, such adjustment shall be final, binding and conclusive if the Construction Manager cannot provide adequate documentation to support the amount in dispute. The Construction Manager shall immediately refund to the Owner any overpayments that, pursuant to an audit, have been determined to have been made by the Owner to the Construction Manager.

ARTICLE XXII (Indemnification)

22.1 To the fullest extent permitted by law, the Construction Manager shall defend, indemnify and hold harmless the Owner, New York University and New York University Medical Center Condominium and such other persons as the Owner may designate and their respective trustees, advisors, members, partners, employees, agents, representatives, officers and directors (collectively the "Indemnified Parties") from and against all claims, damages, losses, liabilities and expenses including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by any negligent act, error or omission or breach of statutory duty or obligation of the Construction Manager, a Subcontractor or sub-subcontractor of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 22.1.

22.2 In any claim against the Indemnified Parties by any employee of the Construction Manager, any Subcontractor or sub-subcontractor of any tier or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any Subcontractor or sub-subcontractor of any tier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

22.3 The obligations of the Construction Manager under this Article XXII shall not extend to the liability of the Owner, Architect or their agents or employees, arising out of (a) the negligent preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving or failure to give of directions or instructions by such party or its agents or employees provided such directions or instructions are the primary cause of the injury or damage.

22.4 The provisions of this Article XXII shall survive the termination or expiration of this Agreement and completion of the Work and shall not be limited in any way by the amount of any type of insurance obtained by any party.

**ARTICLE XXIII
(Additional Provisions)**

23.1 The Owner and Architect and their respective representatives and agents and representatives of any Federal, State or City agency or bureau shall, at all times, have access to the Site and the Construction Manager's records with respect to the Project.

23.2 This Agreement shall be governed by and construed in accordance with the laws of the State of New York. All legal proceedings arising out of or relating to this Agreement shall be exclusively maintained in the courts of the State of New York in and for the County of New York. Further, the parties hereby waive trial by jury in any such proceedings.

23.3 All notices hereunder shall be given, made or served by (a) mailing the same by Registered or Certified Mail, Return Receipt Requested, or (b) delivery by hand or (c) sending same via facsimile which must be confirmed within forty-eight (48) hours by Registered letter mailed or delivered in accordance with the foregoing or (d) delivery via Federal Express, Express Mail or a similar courier service, as follows:

- (a) To the Construction Manager:

With copy to:

(b) To the Owner:

Paul Schwabacher
Senior Vice President, Facilities Management
Real Estate Development + Facilities
NYU Langone Medical Center
339 East 28th Street – 1st Floor
New York, New York 10016

and

Annette B. Johnson, Esq.
NYU Hospitals Center
Office of Legal Counsel
530 First Avenue, HCC-15
New York, New York 10016

or at such other address(es) as the parties shall, from time to time, designate by notice given to the other as herein above provided.

23.4 The language in this Agreement shall be construed according to its customary meaning within the metropolitan New York City building industry. Whenever used, the singular shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

23.5 Captions and titles of the different articles and sections are solely for the purpose of aiding and assisting in the location of different material in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

23.6 Whenever in this Agreement any words of obligation or duty regarding any party are used, they shall have the same force and effect as those in the form of an express covenant.

23.7 This Agreement shall be executed in multiple original copies by the Owner and Construction Manager.

23.8 If any provision of the Contract Documents is invalid or unenforceable as against any person or party, the remainder of the Contract Documents and the applicability of such provision to other persons or parties shall not be affected thereby. Each provision of the Contract Documents shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by law.

23.9 No personal liability arising out of or relating to the Contract Documents shall accrue against any individual, officer, director, member, partner, shareholder, representative, trustee or fiduciary of the Owner or Construction Manager.

23.10 The Owner shall have the right to occupancy of each component of the Project or portions thereof prior to Substantial Completion. Such occupancy shall not materially interfere with the Construction Manager's performance of its obligations hereunder; provided, however, that in the event of delay for which the Construction Manager is responsible, the Construction Manager shall make the Project or portions thereof available to the Owner for occupancy at the earliest possible times in accordance with the Owner's requirements.

23.11 No delay in enforcing any right, remedy, privilege or recourse accorded to either party or to which either party may be or become entitled to have or exercise under this Agreement shall diminish, suspend or exhaust any such right, remedy, privilege or recourse.

23.12 The sole beneficiaries of this Agreement are the Owner and Construction Manager and the permitted assignees hereof. This Agreement is not intended to confer any benefit or rights upon persons other than the parties hereto and the permitted assignees hereof.

23.13 Further to Section 23.12 of this Agreement, no provision of either this Agreement or the Subcontracts shall in any way be construed or inferred to create any contractual relationship, obligation, responsibility, duty or obligation to pay between the Owner and any Subcontractor or any entity or individual claiming through them. The Construction Manager shall include this provision in each and every Subcontract and any other instrument by which the Construction Manager procures labor, material, goods or services for the Project.

23.14 Nothing contained in this Agreement shall be construed to mean that the Construction Manager and Owner are joint venturers or partners.

23.15 The Construction Manager shall at all times enforce discipline and good order in and around the Site. The Construction Manager is fully aware that the Project area is proximate to critical Medical Center activities. As such, there shall be a "zero tolerance" policy with respect to any alcoholic beverage consumption, drug use, other criminal activity, vandalism or harassment (either verbal or otherwise) of any kind or nature in and around the Site on the part of any workers. Upon discovery and identification of any offending persons, they shall immediately be escorted from the Site and thereafter permanently banned from returning. The Construction Manager shall make this policy part of all Subcontracts and any other instrument by which the Construction Manager procures labor, material, goods or services for the Project.

23.16 The Construction Manager shall maintain the confidentiality of all information, data, reports and communications regarding the Project, the Owner and New York University, excluding information in the public domain or obtained from a third party not under an obligation to maintain the confidentiality of the information. The Construction Manager shall not permit the release of confidential information to others. The Construction Manager also shall not make any public announcement or statement or publicity release regarding the Project without the Owner's prior written authorization. The Construction Manager shall require all employees, agents and Subcontractors to comply with the provisions of this Section 23.16 to the same extent that the Construction Manager is required to comply.

23.17 The Construction Manager and each person signing on behalf of the Construction Manager represents and warrants that the Construction Manager and each parent and/or affiliate of the Construction Manager has not been suspended, disqualified, debarred or otherwise excluded from or declared ineligible to bid or perform work for any governmental agency or otherwise prohibited from participation in any federal or state program, including Medicare or Medicaid (collectively, "Program"), and to the best of its knowledge, there are no pending civil anti-trust or criminal investigations or pending or threatened debarments or exclusions of Construction Manager from any Program. Construction Manager covenants to notify Owner in writing as soon as practicable if Construction Manager is the subject of any civil anti-trust or criminal investigation, or is excluded, barred or suspended from participation in any Program, and to refrain from employing or contracting for purposes of providing any work or services to Owner with any individual or entity known by Construction Manager to be sanctioned, suspended or excluded from participation in any Program. The Construction Manager shall include the provisions of this "No Exclusion" section in each Subcontract that the Construction Manager enters into under this Agreement and shall cause such Subcontractors and their sub-subcontractors of any tier to so include such provisions. Each of the representations and warranties made in this "No Exclusion" section is a material representation of fact by the Construction Manager upon which the Owner has relied as an essential inducement to enter into this Agreement. In addition to any other remedies available to the Owner, the Owner may terminate the Contract for default in the event that any representation or warranty made in this Section 23.17 is untrue at the time of entering into this Agreement or becomes untrue at any time during the term of this Agreement.

23.18 Except to the extent covered by insurance and except as otherwise provided herein, the Construction Manager and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, without limitation: (a) damages incurred by the Owner or rental expenses and for loss of use, income, profit, financing, business and reputation and loss of management or employee productivity or the services of such persons (except to the extent that such damages are recoverable by the Owner pursuant to Section 5.4); and (b) damages incurred by the Construction Manager or any Subcontractor or sub-subcontractor of any tier for home office expenses including compensation of personnel stationed in the home office, loss of financing, business and reputation, loss of profit and loss of management or employee productivity or the services of such persons.

23.19 The Construction Manager acknowledges that the Owner may seek recovery of amounts paid to the Construction Manager pursuant to this Agreement from the Federal Emergency Management Agency ("FEMA"), insurance companies and other potential funding sources and that the Owner has engaged consultants to assist in such recovery, and the Construction Manager agrees to cooperate fully with the Owner, FEMA, insurance companies, other potential funding sources and the Owner's consultants as requested by the Owner. The Consultant shall comply with the provisions of "FEMA Addendum #1 - Construction" annexed hereto as Exhibit I to the extent applicable to any FEMA aid obtained by the Owner for any part of the Sandy Work. The term "Contractor" as used in the aforesaid addendum shall refer to the Construction Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

OWNER:

NYU HOSPITALS CENTER

By: _____

Name: _____

Title: _____

CONSTRUCTION MANAGER:

By: _____

Name: _____

Title: _____

EXHIBIT A

PROJECT DESCRIPTION

EXHIBIT B

PRELIMINARY LIST OF GENERAL
CONDITIONS WORK ITEMS

EXHIBIT C

LIST OF
CONSTRUCTION MANAGER'S PROJECT PERSONNEL

EXHIBIT D

STANDARD SUBCONTRACT FORMS

EXHIBIT E

FORM OF GMP/ SCHEDULE AMENDMENT

Owner: NYU Hospitals Center

Construction Manager: _____

Project: _____

Contract: Construction Management Agreement dated as of _____, 20__
and all Contract Documents

This AMENDMENT amends the Contract.

1. The Guaranteed Maximum Price (“GMP”) for construction of the Project is \$ _____. The fixed General Conditions Amount included in the GMP is \$ _____. The fixed Construction Fee included in the GMP is \$ _____. The calculation of the GMP and all assumptions and qualifications of the GMP are annexed hereto.

2. A list of drawings, specifications and other documents used in arriving at the GMP is annexed hereto.

3. The schedule for construction of the Project (the “Construction Schedule”) is annexed hereto. The Construction Manager shall achieve Substantial Completion of the Project no later than ____ calendar days after receipt of notice to proceed from the Owner [or: no later than _____]. TIME IS OF THE ESSENCE.

4. The GMP will be adjusted by Change Order as provided in Section 3.3(d) of the Agreement on account of overruns and underruns of Allowances.

5. The GMP will not be adjusted on account of overruns or underruns of Holds.

6. The above-referenced Contract, as amended by this GMP/Schedule Amendment, continues in full force and effect.

Dated:

OWNER:

NYU HOSPITALS CENTER

By: _____

Name: _____

Title: _____

CONSTRUCTION MANAGER:

By: _____

Name: _____

Title: _____

Calculation of GMP

Trade Work Costs

Subtotal \$ _____

General Conditions Work Costs
General Conditions Amount
Site Labor Costs
Insurance Premiums
Payment and Performance Bond
Premiums

Subtotal \$ _____

Construction Fee \$

Contingency \$

Construction Manager Bond Cost \$

Guaranteed Maximum Price \$

THE GMP, ITS BASIS, AND ALL ASSUMPTIONS AND CLARIFICATIONS IS ANNEXED HERETO AND INCORPORATED HEREIN. ALSO ANNEXED HERETO AND INCORPORATED HEREIN IS THE FINAL LIST OF GENERAL CONDITIONS WORK ITEMS.

EXHIBIT F

FINAL PAYMENT CERTIFICATE, RELEASE AND LIEN WAIVER

FINAL PAYMENT CERTIFICATE

The undersigned Construction Manager, in order to induce the making of final payment to the construction manager in connection with the _____,

New York, New York (the "Project"), hereby certifies that all work required to be performed by the undersigned construction manager in connection with the Project has been performed; that all laborers, materialmen, subcontractors and sub-subcontractors that have performed labor or furnished materials or equipment in connection with the undersigned construction manager's work on the Project have been paid in full; and that there are no liens or claims with respect to the undersigned construction manager's work.

IN WITNESS WHEREOF, construction manager named below has executed this Final Payment Certificate this _____ day of _____, 20__.

CONSTRUCTION MANAGER:

By: _____

Name: _____

Title: _____

EXHIBIT G

OWNER'S WORK POLICIES AND PROCEDURES

EXHIBIT H

OWNER'S STATEMENT OF POLICY
REGARDING REIMBURSEMENT OF COSTS
UNDER COST REIMBURSABLE CONSTRUCTION CONTRACTS

EXHIBIT I

FEMA ADDENDUM #1 - CONSTRUCTION

FEMA Addendum #1 - Construction

As certain funding for the project may be provided by or through the Federal Emergency Management Agency ("FEMA"), the Contractor further agrees as follows:

Non-Discrimination. During the performance of the Work, the Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations 41 CFR chapter 60.

Access to Books and Records. The Contractor agrees that any federal agency providing funding for the Contractor's Work, including FEMA and the Comptroller General of the United States, shall have access to the Contractor's books and records relating to the hourly compensation and Reimbursable Expenses for review, audit and reproduction.

Compliance With Laws. The Contractor agrees to comply with the Contract Work Hours and Safety Standards Act Sections 103 and 107 (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5); Section 306 of the Clean Air Act (42 U.S.C. 1857(h); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; and Environmental Protection Agency regulations (40 CFR part 15).

No Exclusion. The Contractor and each person signing on behalf of the Contractor represents and warrants that the Contractor and each parent and/or affiliate of the Contractor has not been suspended, disqualified, debarred or otherwise excluded from or declared ineligible to bid or perform work for any governmental agency or otherwise prohibited from participation in any federal or state program, including Medicare or Medicaid (collectively, "Program"), and to the best of its knowledge, there are no pending civil anti-trust or criminal investigations or pending or threatened debarments or exclusions of Contractor from any Program. Contractor covenants to notify Owner in writing as soon as practicable if Contractor is the subject of any civil anti-trust or criminal investigation, or is excluded, barred or suspended from participation in any Program and to refrain from employing or contracting for purposes of providing any work or services to Owner with any individual or entity known by Contractor to be sanctioned, suspended or excluded from participation in any Program. The Contractor shall include the provisions of this "No Exclusion" Article in each subcontract agreement (of any tier) that the Contractor enters into under this Agreement and shall cause such subcontractors and their subcontractors of any tier to so include such provisions. Each of the representations and warranties made in this "No Exclusion" Article is a material representation of fact by the Contractor upon which Owner has relied as an essential inducement to enter into this Agreement. In addition to any other remedies available to the Owner, the Owner may terminate this Agreement for cause in the event that any representation or warranty made in this Article is untrue at the time of entering into this Agreement or becomes untrue at any time during the term of this Agreement.

Copeland Anti-Kickback Act. The Contractor agrees to comply with all applicable provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).

Certifications. The Contractor agrees to prepare and deliver to the Owner certifications of the Contractor's ongoing compliance with the foregoing provisions as may reasonably be requested by the Owner in writing during the term of the Agreement.

EXHIBIT J

FORM OF PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

CONTRACT: _____ (hereinafter called the "Contract")

KNOW ALL PERSONS BY THESE PRESENTS, that*

_____,
of _____
(hereinafter called the "Contractor") and _____

(hereinafter called the "Surety"), are held and firmly bound unto the NYU Hospitals Center
(hereinafter called the "Contracting Party"), in the sum of

_____ dollars

(\$ _____), lawful money of the United States of America, to be paid to the Contracting Party, for which payment well and truly to be made, the Contractor and the Surety do hereby bind themselves jointly and severally and their, and each of their executors, administrators, successors and assigns firmly by these presents.

WHEREAS, the Contractor is seeking to enter, or has entered, into a contract known as 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 Contractor shall promptly 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 Contract, and shall fully indemnify and save harmless the Contracting Party from all cost and damage which it may suffer by reason of failure so to do, and shall fully reimburse and repay the Contracting Party for all outlay and expense which the Contracting Party may incur in making good any such default, and shall protect the Contracting Party against, and pay any and all amounts, damages, costs

* Insert Contractor's name. If a corporation, give the State of incorporation, also using the phrase "a corporation organized under the laws of _____." If a partnership, give full names of partners, also using the phrase, "co-partners, doing business under the firm name of _____." If a joint venture, give the name of the joint venture or the names of the joint venturers, also using the phrase "a joint venture formed under the laws of _____." If an individual using a trade name, give individual name, using also the phrase, "an individual doing business under the trade name of _____."

and judgments which may or shall be recovered against the Contracting Party or their officer or agents or which the Contracting Party 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 Contractor, or its agents or servants, or the infringement of any 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, for value received, hereby stipulates and agrees, if requested to do so by the Contracting Party, to fully perform and complete the Contract, pursuant to the terms, conditions, and covenants thereof, if for any cause, the Contractor fails or neglects to so fully perform and complete the Contract. The Surety further agrees to commence such work of completion within twenty (20) days after written notice thereof from the Contracting Party and to complete such Contract within such time as the Contracting Party may fix.

The Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety 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 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 the Contract to be performed or any monies due or to become due thereunder; and said Surety 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 as though done or omitted to be done by or in relation to said Contractor.

Any legal action related to this bond or the Surety's obligations hereunder shall be brought in New York County in the State of New York.

IN WITNESS WHEREOF, the Contractor and the Surety 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 _____, 20__.

(Seal)

Contractor's Name

By _____
Contractor's Authorized Signature*

Print Name

Title

Attest: _____
Secretary

(Seal)

By _____
Surety's Name

Authorized Signature

Print Name

* If the Contractor is a partnership, the bond should be signed by one of the partners in the firm name.

If the Contractor is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

If the Contractor is a joint venture, the bond should be signed by an individual duly authorized by the parties of the joint venture to act for the joint venture.

The number of original bonds to be executed should correspond with the number of originals of the Contract to be executed.

PAYMENT BOND

CONTRACT: _____(hereinafter the “Contract”)_

KNOW ALL PERSONS BY THESE PRESENTS, that*

_____, of _____

____ (hereinafter called the “Contractor”) and _____

_____ (hereinafter called the “Surety”), are held and firmly bound unto the NYU Hospitals Center (hereinafter called the “Contracting Party”), in the sum of

_____ dollars (\$ _____), lawful money of the United States of America, to be paid to the Contracting Party, for which payment well and truly to be made, the Contractor and the Surety do hereby bind themselves jointly and severally and their, and each of their executors, administrators, successors and assigns firmly by these presents.

WHEREAS, the Contractor is seeking to enter, or has entered, into a contract known as Contract _____, a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full:

* Insert Contractor’s name. If a corporation, give the State of incorporation, also using the phrase “a corporation organized under the laws of _____.” If a partnership, give full names of partners, also using the phrase, “co-partners, doing business under the firm name of _____.” If a joint venture, give the name of the joint venture or the names of the joint venturers, also using the phrase “a joint venture formed under the laws of _____.” If an individual using a trade name, give individual name, using also the phrase, “an individual doing business under the trade name of _____.”

NOW, THEREFORE, the conditions of the foregoing obligation is such that if the Contractor shall promptly pay all monies due to all persons furnishing the Contractor or any subcontractor of the Contractor with labor or material in the prosecution of the Contract, including without limitation:

- (a) Wages and compensation for labor performed and services rendered by all persons engaged in the prosecution of the Contract, and any amendment or extension thereof or addition thereto, whether such persons are agents, servants or employees of the Contractor or of 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 Contract work regardless of any contractual relationship between the Contractor or subcontractors, or his/her 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 Contract work; and
- (b) Materials and supplies (whether incorporated in the permanent structure or not), as well as vehicles, fuels, oils, implements or machinery furnished, used or consumed by said Contractor or any subcontractor at or in the vicinity of the site of the Contract work in the prosecution of the 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 Contractor and Surety agree that this bond shall be for the benefit of any material person or laborer having a just claim, as well as the Contracting Party itself.
- (b) All persons who have performed labor, rendered services or furnished materials and supplies as aforesaid, shall have a direct right to action against the Contractor and its successors and assigns, and the Surety herein, or against either or both of any of them and their successors and assigns. Such person may sue in his/her own name, and may prosecute the suit to judgment and execution without the necessity of joining with any other person as party plaintiff.
- (c) The Contractor and Surety agree that neither of them will hold the Contracting Party liable for any judgment for costs or otherwise, obtained by either the Contractor or Surety or both of them against a laborer or material person in a suit brought by either a laborer or material person under this bond for monies allegedly due for performing work or furnishing material.

- (d) The Surety or its successors and assigns shall not be liable for any compensation recoverable by an employee or laborer under the Workers' Compensation Law.
- (e) In no event shall the Surety, or its successor or assigns, be liable for a greater sum than the amount of its bond or be subject to any suit, action or proceeding hereon that is instituted by any person, firm, or corporation hereunder later than two (2) years after the complete performance of said Contract and final settlement thereof.

The Contractor, for itself and its successors and assigns, and the Surety, for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of the Contracting Party to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which the Contractor or Surety or either of them might interpose to an action brought hereon by any person, firm or corporation, including subcontractors, material persons 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 Contracting Party to require the foregoing provisions to be placed in this bond.

And the Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety, and its bond 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 provision thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any work to be performed or any monies due or to become due thereunder and said Surety does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulate 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 as though done or omitted to be done by or in relation to said Contractor.

Any legal action related to this bond or the Surety's obligations hereunder shall be brought in New York County in the State of New York.

IN WITNESS WHEREOF, the Contractor and the Surety 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 _____, 20__

(Seal)

Contractor's Name

By

—

Signature *

Contractor's Authorized

Print Name

Title

Attest: _____

Secretary

(Seal)

* If the Contractor is a partnership, the bond should be signed by one of the partners in the firm name.

If the Contractor is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

If the Contractor is a joint venture, the bond should be signed by an individual duly authorized by the parties of the joint venture to act for the joint venture.

The number of original bonds to be executed should correspond with the number of originals of the Contract to be executed.

By

Surety's Name

Authorized Signature

Print Name

ACKNOWLEDGMENT FOR CONTRACTOR

STATE OF _____)
) SS.:
COUNTY OF _____)

On this ____ day of _____ 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that s/he resides at _____, in the City of _____, in the County of _____, in the State of _____; and further that s/he:

[Mark an X in the appropriate box and complete the accompanying statement.]

(If an individual): executed the foregoing instrument in her/his name and on her/his own behalf.

(If a corporation): is the _____ of _____, the corporation in said instrument; that, by authority of the Board of Directors of said corporation, s/he is authorized to execute the foregoing instrument on behalf of the corporation for the purposes set forth therein; and that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(If a partnership): is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership s/he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(If a limited liability company): is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that, s/he is authorized to execute

the foregoing instrument on behalf of the limited liability company for the purposes set forth therein; and that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

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