

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY
30-30 THOMSON AVENUE
LONG ISLAND CITY, NEW YORK 11101-3045

GENERAL CONDITIONS

FOR
CONSTRUCTION
PROJECTS

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ARTICLE 1 - DEFINITIONS

Section 1.01 - Definitions

The following terms as used in the Contract Documents shall be defined as follows:

Article 78

Article 78 of the New York Civil Practice Law and Rules.

Beneficial Occupancy

The use, occupancy or operation by the SCA or its designee of the Work or any part thereof, whether or not Substantially Complete and without additional expenditure by the SCA to ensure protection of life, health, and safety, as evidenced by a certificate of Beneficial Occupancy executed by the SCA. Beneficial Occupancy shall not constitute acceptance of Work that does not comply with the requirements of the Contract.

Change Order

Documents issued by the SCA to the Contractor after execution of this Contract, authorizing or requiring changes in the Work consisting of:

- (a) additions, deletions, or modification to the Work;
- (b) an extension or reduction of time to complete the Work;
- (c) an increase or reduction in the payment to the Contractor; or
- (d) any other change in the Contract (including any change in the Contract Documents) or in the sequence of performing or phasing of the Work.

City

The City of New York.

Construction Site Emergency or Emergency

An unforeseen condition or event requiring prompt action by the Contractor, including, but not limited to, a construction related accident, uncontrolled release of hazardous materials, natural disaster, automobile accident, flood and fire or any other emergency which affects life, safety or property.

Contract

The agreement between the SCA and the Contractor consisting of all the Contract Documents.

Contract Award Amount

The dollar amount bid by the Contractor and agreed to by the SCA as set forth in the Contract.

Contract and Contract Documents

Consists of the following: Invitation for Bid, Notice to Bidders, Information for Bidders, Form of Bid, Construction Contract, Notice of Award, Notice to Proceed, General Conditions, Supplemental General Conditions, General Requirements, Supplemental General Requirements, Detailed Payment Breakdown, Bonds, Plans, Drawings, Specifications, all Addenda, Appendices and Amendments to any Contract Document, Change Orders, Safety Manual, Owner Controlled Insurance Program Manual and any supplementary data, together with all provisions of law deemed to be inserted in any of these documents. The Contract Documents form the Contract which represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements either written or oral.

Contractor

A person, persons, firm, partnership, corporation, joint venture, business association, or any entity with whom the Contract is made by the SCA to perform the Work.

Demolition

Work in which a building, portion of a structure or its components (either internal or external), a chimney, steeple, floor, exterior wall, or roof, is razed or removed.

Department

The Department of Education of the City of New York.

Detailed Payment Breakdown

Information supplied by the Contractor in the form prescribed by the SCA to establish the basis for each application by the Contractor for payment.

Dispute Resolution Procedure

The SCA procedure attached hereto as Appendix B, for resolving disputes arising out of the Contract.

Drawings

The graphic and pictorial descriptions of the Work or portions thereof, issued to the Contractor, whether at the time of Contract execution or during performance of the Work, and which may show the design, location and dimensions of the Work, plans, elevations, sections, details, schedules, diagrams, etc.

Extra Work

Any work in addition to the Work originally required by the Contract Documents and for which the SCA issues a Change Order.

Final Completion

The completion of all requirements of the Contract, including all punchlist items, and submission of all required documents.

Install

To unload at the delivery point at the Site and perform every operation necessary to establish secure mounting and correct operation at the proper location as required by the Contract.

Material in Short or Critical Supply

Material, as determined by the SCA upon written application by the Contractor pursuant to the terms of the Contract, which is not generally available in a timely manner to permit Substantial Completion.

Material Specifically Fabricated

Material, as determined by the SCA upon written application by the Contractor pursuant to the terms of the Contract, which is not generally available as a standard item(s) without special fabrication.

Notice

A notice, request, or consent, in writing and addressed to a party hereto or its authorized representative, which may or must be given under the Contract.

Notice to Proceed

A Notice from the SCA to the Contractor directing the Contractor to commence Work on a specific date.

Project

All of the Work required by the Contract, including all administrative aspects necessary to satisfy the Contract requirements.

Protected Material

All or any part of any plan, drawing, design, specification, shop drawing, sample, report, computer program, computer data base, study, survey, datum, part, list, paper, composition of matter, manufacture, process, apparatus, appliance, type of construction, or material, regardless of medium, prepared by or for the Contractor, any Subcontractor, their respective employees, or the SCA in connection with the Work, whether before, during or after the date of the Contract.

Safety Manual

The manual, as revised from time to time, issued by the SCA containing requirements and regulations regarding safety in performing the Work, which is available at the following link: <http://www.nycsca.org/Doing-Business/Safety-Manual-Checklists>

SCA or Authority

The New York City School Construction Authority (SCA), its agents, officers, trustees, employees, representatives or designees, as the case may be.

Schedule

The time duration of the Work, or portions thereof, established by the SCA, or established by the Contractor and approved by the SCA.

Site

The location or locations at which the Work is to be installed or erected, as indicated in the Contract Documents.

Specifications

The portion of the Contract Documents that describes the Work, and may, without limitation, include the written requirements for materials, equipment, construction systems, standards by which the Work shall be performed, and workmanship for the Work.

State

The State of New York.

Subcontractor

A person, persons, firm, partnership, corporation, joint venture, business association, or any entity under contract with the Contractor or any Subcontractor of any tier, to perform any portion of the Work.

Substantial Completion

The Work shall be deemed substantially complete when, at the sole discretion of the SCA: i) all Work has been satisfactorily completed in accordance with the Contract; ii) all equipment, machinery, instruments and other systems furnished or installed as part of the Work have been tested and demonstrated for use; iii) all documents, certifications, permits and proofs of compliance required by the Contract for the lawful use of the Work have been provided; and iv) the Work can be safely used for its intended purpose.

Work

All activities of the Contractor and its Subcontractors required by the Contract. Work includes, but is not limited to, procurement of materials, construction of the Project in whole or in part, and administration and coordination of subcontracts. The Work shall include not only Contractor's obligations that are expressly set forth in the Contract, but also all that is reasonably inferable from the express description of the Work. The Work shall include the activities that Contractor itself performs as well as activities it delegates to its Subcontractors and third parties, and includes, but is not limited to, all documents, reports, studies, tests, inspections and repairs required by the Contract.

Section 1.02 - Nomenclature

Materials, equipment or other Work described in words which have a generally accepted technical or trade meaning shall be interpreted as having that meaning in connection with the Contract Documents, unless otherwise specifically defined in the Contract.

ARTICLE 2 - CONTRACT DOCUMENTS

Section 2.01 - Captions

The table of contents, titles, captions, headings and running headlines contained herein and in other Contract Documents are solely to facilitate reference to various provisions of the Contract and in no way affect the interpretation of the provisions to which they refer.

Section 2.02 - Order of Preference

A. Specific or numerical dimensions shall take precedence over scaled dimensions. Specifications shall take precedence over Drawings. Larger scale Drawings shall take precedence over smaller scale Drawings. Addenda shall take precedence over previous Addenda and earlier dated Drawings and Specifications.

B. Should a conflict occur in or between or among any parts of the Contract Documents which is not resolved by the precedence rules in Paragraph A above, the more expensive way of doing the Work, the better quality or greater quantity of material shall govern, unless the SCA otherwise directs.

C. Drawings and Specifications are reciprocal. Anything shown on the Plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans, shall have the same effect as if shown or mentioned in both.

Section 2.03 - Conflicting Provisions

If any provisions of the Contract Documents are in conflict with each other, or are inconsistent, then the provision of the Construction Contract shall govern. If no provision of the Construction Contract is applicable, then the provision of the General Conditions shall govern. If no provision of either the Construction Contract or the General Conditions is applicable, then the applicable provision of the following documents shall govern in the order in which they are listed: first the Supplemental General Requirements, then the General Requirements, then the Specifications, then the Drawings.

Section 2.04 - Notices

Any Notice, given under the Contract shall be in writing (including facsimile) and shall be addressed to the Contractor, the Contractor's authorized representative, or the SCA at the addresses set forth in the Construction Contract.

Any Notice required by the Contract to be given or made within a specified period of time, on or before a date certain, shall be transmitted either (1) by hand delivery (but only if subject to written receipt), or (2) by regular mail together with either facsimile or email at the following address: legalnotices@nycsca.org.

Notices related to management and progress of the Work shall be delivered or sent to SCA Construction Management ("CM") to the attention of the Project Officer managing the Work. Other Notices required under Articles herein shall be delivered or sent to the SCA person or office indicated in the Article. All Notices of Claim shall be filed with SCA's Legal Department.

Any Notice sent by mail shall be deemed given three (3) business days after mailing. All other Notices shall be deemed given when received.

Section 2.05 - SCA Directions and Determinations

The SCA shall give all orders and directions contemplated under the Contract relative to the execution of the Work. Subject to the provisions of Article 8 and Appendix B attached hereto and made a part hereof, the SCA shall determine the amount, quality, acceptability, and fitness of the Work and shall decide all questions which may arise in relation to such Work.

ARTICLE 3 - PATENT, COPYRIGHT, AND OTHER PROTECTED MATERIAL

Section 3.01 - Patent, Copyright, and Other Protected Material

A. All Contract Documents issued by the SCA or the Contractor in connection with the Contract or the Work shall be and remain the property of the SCA, whether or not the SCA undertakes the Project or subsequently terminates the Work or the Contract.

B. The SCA shall own any patent or copyright to, and the right to patent or copyright, and all other proprietary rights in, all Protected Material.

C. If any Protected Material utilized in the Work is patented or copyrighted by any other person, or entity (or is or may be subject to other protection from use or disclosure), the SCA shall have a royalty-free perpetual license to use the same for any purpose. If the Contractor does not have the right to grant such a license, the Contractor shall obtain for the SCA such rights of use as the SCA may request, without separate or additional compensation, whether Protected Material is patented or copyrighted or becomes subject to other protection from use before, during or after completion of the Work. The SCA shall have the right to use, or to permit the use of all Protected Material, all oral information whatsoever received by the SCA in connection with the Work, and all ideas or methods represented by Protected Material, for any purposes and at any time, without additional compensation. No Protected Material prepared or utilized in connection with performance of the Work shall be deemed confidential; and any statement or legend to the contrary on any document shall be void and of no effect against the SCA.

D. The Contractor hereby agrees to indemnify, protect, and hold harmless the SCA from loss or damage and to reimburse the SCA for any expenses, including legal fees and disbursements which the SCA may incur as a result of litigation of any nature, or on account of infringement of any copyright, license, letters patent or patent rights arising out of the Work or the use of any portion thereof.

ARTICLE 4 - CONTRACTOR'S RESPONSIBILITIES

Section 4.01 - Contractor's Obligations

A. The Contractor shall be responsible for the full and correct performance of the Work required by the Contract within the time specified herein, including work of the Contractor's Subcontractors, and any errors therein shall be corrected at the Contractor's own cost and expense. In addition, the Contractor shall indemnify the SCA for any costs or expenses attributable to errors in performance by the Contractor or the Contractor's Subcontractors. The Contractor's obligations hereunder shall include taking field measurements for all Work hereunder. Approval of shop drawings by the SCA shall not relieve the Contractor from correcting Work either reflected in error on the Contractor's shop drawings, not conforming to the field requirements, or not complying with the terms of this Contract. It shall not be incumbent upon the SCA to discover any mistakes, errors, omissions, or deviations from the Contract requirements, or in the quality or kind of materials used by the Contractor or in the shop drawings, schedules, and reports submitted by the Contractor and the SCA's approval of same shall not relieve the Contractor from responsibility for unauthorized changes, deviations, omissions, or for errors of any sort therein. Performance by the Contractor of any Work before the required approvals therefor have been issued shall be at the Contractor's sole risk and expense.

B. In case of discrepancy or difference between any figures, drawings, or specifications; the matter shall be immediately submitted in writing to the SCA, whose decision shall be final, and without whose decision said discrepancy or difference shall not be adjusted by the Contractor, save only at the Contractor's own risk and expense.

C. Unless otherwise specifically provided in the Contract, the Contractor, without limitation, shall furnish and be responsible for all shop and field requirements, lines, grades, dimensions, layouts, colors, qualities, quantities, tests, approvals, operating manuals, guarantees, cuttings, removals, openings, channels, chases, flues, sleeves, insets, dowels, hangers, patching, clearing, temporary heat, water and electricity, guards, rails, night lights, barricades, pumping hoists, elevators, scaffolds, runways, protective paper, tarpaulins, polyethylene protection, and clean-up, and all things which may be necessary in performance of the Work contracted hereunder.

D. If the SCA shall furnish any basic reference lines and bench marks to the Contractor, such basic reference lines and bench marks must be used by the Contractor and the finished Work shall agree therewith.

E. The Contractor agrees that the Contractor shall protect and shall be solely responsible for all labor and material provided for under this Contract, whether or not the same may be erected in place, and for all its plant, tools, equipment, materials, tools of the Contractor's employees and agents, etc., for all adjoining private and public property, and all existing Work on the Site, which may be damaged by the Contractor's Work. In no event shall the SCA be liable to the Contractor for loss of, pilferage, or damage to any of the same. In the event of said labor and materials, plant, tools, or equipment, etc., are damaged, lost, or destroyed by reason of fire, theft (irrespective of the negligence of the parties hereto or others), civil commotion, riot, insurrection, violence, war, acts of God, etc., the Contractor's responsibility therefor shall be absolute, and the Contractor shall replace, repair, rebuild, and make good any and all said damage or loss of any and all kinds whatsoever.

F. Contractor shall be responsible for securing all permits required to perform the Work and/or required by the applicable laws, regulations, ordinances, etc., and maintain the validity of all such permits throughout the Contract duration.

Section 4.02 - Contractor's Title to Materials

A. No materials or supplies for the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has full, good and clear title to all materials and supplies used by it in the Work, or resold to the SCA pursuant to the Contract free from all liens, claims or encumbrances.

B. All materials, equipment and articles which become the property of the SCA shall be new unless the Contract specifically states otherwise.

Section 4.03 - Quality, Quantity, and Labeling

A. The Contractor shall furnish materials and equipment of the quality and quantity specified in the Contract, or better.

B. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet such standards.

C. The above requirements shall not restrict or affect the SCA's right to test materials as provided in the Contract.

Section 4.04 - "Or Equal" Clause

A. Whenever a material, article or piece of equipment is identified on the plans or in the Specifications by reference to manufacturer's or vendor's name, trade name, catalogue number, or make, said identification is intended to establish a standard. Any material, article or equipment of other manufacturers and vendors which fully meets the requirements imposed by the general design may be considered equally acceptable provided that, in the opinion of the SCA, the material, article, or equipment so proposed is of equal quality, substance and function and includes a warranty that is at least equal to or better than the warranty on the identified item. The Contractor shall be responsible to submit proof of equality and to provide and pay for any tests which the SCA may require to evaluate such proposed substitution. The Contractor shall not provide or install any such proposed material, article, or equipment without the prior written approval of the SCA.

B. When the SCA, approves a product substitution that requires a revision or redesign of any part of the Work, such revision and redesign and all new drawings and details required therefor shall be provided by the Contractor for approval by the SCA at Contractor's sole expense. When the SCA, approves a product substitution that results in additional work, time or costs, the Contractor proposing the product shall be solely responsible for all such additional costs, time, or work.

Section 4.05 - Hazardous Materials and Asbestos Subcontracts

If the Contractor, or any Subcontractor, is required to perform removal of hazardous waste, abatement of asbestos, or pollution related Work, the Contractor shall assure that the provisions of Appendix E, Terms and Conditions for Hazardous Materials Subcontractor, and/or Appendix F Terms and Conditions for Asbestos Subcontractor, each of which is attached hereto and made a part hereof, shall be incorporated in any Subcontract for such Work.

ARTICLE 5 - CONTRACTOR

Section 5.01 - Project Management and Superintendence by Contractor

A. The Contractor shall supervise and direct the Work using his best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract.

B. The Contractor shall assure that the highest standards of safety, and industrial and environmental hygiene, are enforced among its employees and all Subcontractors, and that all such employees and Subcontractors know, are bound by, and adhere to the SCA's requirements for safety, set forth in the Contract, including without limitation, the requirements of Article 13 - Safety - Protection of Property.

C. The Contractor shall employ a full-time competent construction superintendent in charge of the Work and necessary foremen, assistants, and staff who shall be in attendance on the Site during the progress of the Work. In addition, if the Contract Award Amount equals or exceeds ten million (\$10,000,000) dollars, the Contractor shall also employ a full-time competent project manager in charge of the Project who shall be stationed at the Site during the entire period of construction. Neither the construction superintendent, nor the project manager, shall work on any other contracts or projects during the progress of the Work. Further, the construction superintendent and the project manager shall both devote their full-time efforts to the performance of the duties of their respective functions and shall perform no other functions during the progress of the Work. Both the construction superintendent and the project manager shall have full authority to accept instructions, make decisions, and act for the Contractor at all times. All communications given to the construction superintendent and/or the project manager shall be as binding as if given to the Contractor.

D. If at any time the construction superintendent or the project manager is not satisfactory to the SCA, the Contractor shall, if requested in writing by the SCA, replace said construction superintendent or project manager with another construction superintendent or project manager satisfactory to the SCA, within the time period directed by the SCA.

E. The Contractor shall enforce strict discipline and good order at all times among Contractor's employees and all Subcontractors. Contractor shall not engage any employee not skilled in the task assigned. All employees assigned to the Work by the Contractor shall perform in the best manner and shall cooperate fully with the SCA. The Contractor shall remove from the Work any of its employees, or those of any Subcontractor, when so directed by the SCA.

F. The various Subcontractors shall likewise have competent superintendents and/or foremen in charge of their respective portions of the Work at all times. If at any time, the SCA determines that any Subcontractor does not have a competent superintendent or foreman on Site, the Contractor shall have the obligation to take appropriate steps to assure that proper supervision is provided immediately.

Section 5.02 - Subsurface or Site Conditions Found Different

A. The Contractor acknowledges the representations made in Section 5.03 hereof and agrees that the Contract consideration includes such provisions which the Contractor deems proper for all subsurface or Site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract or in other information available to the Contractor or from the Contractor's inspection and examination of the Site prior to submission of bids.

B. Should the Contractor encounter subsurface or conditions at the Site materially differing from those indicated in the Contract, the Contractor shall immediately give Notice to the SCA of the differing conditions and shall not disturb the differing conditions until directed in writing to do so by the SCA.

Section 5.03 - Representations of the Contractor

The Contractor represents and warrants that:

A. The Contractor is financially solvent and is experienced in and competent to perform the Work required under the Contract;

B. The Contractor fully understands and accepts that TIME IS OF THE ESSENCE in the Contract and that the Contractor shall be responsible for damages resulting from its failure to complete the Work within the time allowed in the Contract;

C. The Contractor is familiar with all federal, state, and other laws, ordinances, orders, rules, codes and regulations affecting the Work required under the Contract, and all Work shall be performed in accordance therewith;

D. Any temporary and permanent Work required by the Contract Documents can be satisfactorily constructed, and that such construction will not injure any person or damage any property;

E. The Contractor has thoroughly examined, understands, and is familiar with all the Contract Documents including, but not limited to, the complete set of Drawings and Specifications of the entire Project;

F. The Contractor has personally inspected or has caused to be inspected, the Site of said Project and all adjacent properties, including the land and buildings thereon, if any, and all conditions existing on or adjacent to the Site, and has examined same with particular regard to the Work to be furnished under this Contract;

G. The Contractor is satisfied as to the nature and location of the Work, the general and local conditions, including, but not limited to, those bearing upon storage of materials, availability of labor, water, electricity, roads, weather conditions, underground water, or similar physical conditions, the character, and quality of surface or subsurface conditions likely to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the possibility and probability of increases in the cost of materials and wage rates, and all other matters upon which information is reasonably obtainable and which in any way can affect the Work under this Contract, or the cost thereof;

H. The Contractor is an independent contractor and not an employee of the SCA. Unless the Contract specifically provides otherwise, the conduct and control of the Work shall be entirely the Contractor's responsibility at all times; and

I. The Contractor fully understands the intent and purposes of the Contract and the obligations thereunder and accepts responsibility for, and is prepared to execute and fulfill completely the requirements set forth therein without exception or reservation at the price specified in the Contract.

Section 5.04 - Verifying Dimensions

A. The Contractor shall take all measurements at the Site and shall verify all dimensions before proceeding with the Work. In case of discrepancy, conflict or difference between any measurements, dimensions, figures, drawings, or specifications, the Contractor immediately shall give Notice to the SCA for its review and direction.

B. During the progress of Work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment and proceed with the fabrication to meet field conditions.

C. The Contractor shall consult all Contract Documents to determine the exact location of all Work and verify spatial relationships of all Work. Any question concerning location or spatial relationships shall be submitted to the SCA for its review and direction.

D. Locations for equipment, pipelines, ductwork and other such items of Work; where not dimensioned on Drawings, shall be determined in consultation with, and approved by, the SCA.

E. The Contractor shall be responsible for the performance of all Work necessary for the proper fitting of the Work in place.

Section 5.05 - Related Work

The Contractor shall be responsible for all dimensions pertaining to related work, fitting its Work with all contiguous and adjacent work to be performed by others and shall coordinate with such other work as necessary.

Section 5.06 - Surveys and Layout

Unless otherwise expressly provided in the Contract, the SCA shall furnish the Contractor with all surveys of the property necessary for the Work. The Contractor shall be responsible for the layout of the Work and verification of all surveys provided by the SCA.

Section 5.07 - Errors or Discrepancies

The Contractor shall examine the Contract Documents thoroughly before commencing the Work and report any errors, conflicts, or discrepancies to the SCA. The Contractor should immediately report to the SCA any error, conflict, or discrepancy detected during the course of the Project.

Section 5.08 - Meetings

The Contractor shall attend all scheduled progress meetings and any other special meetings as directed by the SCA.

Section 5.09 - Contractor's Relationship to Subcontractors

A. The Contractor shall be fully responsible for all portions of the Work furnished by every Subcontractor and for all acts and omissions (whether willful, negligent, or otherwise) of every Subcontractor and every Subcontractor's employees. All Work, acts, and omissions, of every Subcontractor and every Subcontractor's employees shall be deemed those of Contractor for all purposes of the Contract.

B. The Contractor agrees to bind every Subcontractor to comply with the terms of the Contract and requirements of the Contract Documents, including but not limited to the drawings and specifications so far as the same are applicable to the Work of the Subcontractor; provided, however that nothing contained in the Contract Documents shall be construed so as to create any contractual relationship between the Subcontractor and the SCA, nor shall it create any obligation on the part of the SCA to pay or see to the payment of any sums of money to any Subcontractor.

The Contractor shall require all agreements with or between Subcontractors to be in writing. Every subcontract shall provide expressly, that such subcontract and all rights of any Subcontractor thereunder are subject in all respects whatsoever to all requirements of this Contract and that all Work under the subcontract shall comply with all requirements of this Contract.

Each subcontract shall include a provision authorizing termination for necessity or convenience by the Contractor in form and substance equivalent to Section 10.02 hereof and a provision under which the Subcontractor agrees that the Subcontractor's obligations shall be assigned to the SCA, at the SCA's election, upon a termination of Contractor's rights to perform the Contract under either Section 10.01 or 10.02 hereof, effective upon the giving of the SCA's Notice of termination under either such Section. Upon the SCA's request, the Contractor shall deliver to the SCA a counterpart original of the signed subcontract agreement between Contractor and each Subcontractor and any modifications thereof.

Each subcontract shall contain the same terms and conditions as to method of payment for Work and as to retained percentages as are set forth in this Contract; and Contractor shall pay each Subcontractor in accordance with the terms of the applicable subcontract for Work performed by such Subcontractor.

Each subcontract shall contain a provision for performance evaluation by the SCA in the form and substance equivalent to Section 20.07 hereof.

C. Payment to a Subcontractor shall not relieve the Contractor from responsibility for the Work covered by the payment. Except as otherwise provided, nothing contained herein shall create any obligation on the part of the SCA to pay any Subcontractor, nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the Subcontractor and the SCA.

D. The Contractor's execution of any subcontract shall be deemed a representation to the SCA that the Contractor (1) has informed the Subcontractor fully and completely of all requirements of this Contract relating directly or indirectly to the Subcontractor's Work; and (2) has taken all steps necessary to ensure that each and every Subcontractor meets the minimum qualifications required by the SCA of any contractor submitting bids for any SCA work.

E. The Contractor shall contract only with SCA approved Subcontractors in accordance with the requirements specified in the Information for Bidders. The Contractor shall not permit any Subcontractor to commence Work without the prior written approval of such Subcontractor by the SCA. The Contractor shall submit to the SCA a written request for Subcontractor approval for all proposed Subcontractors in the form provided by the SCA.

ARTICLE 6 - INSPECTION AND ACCEPTANCE

Section 6.01 - Access to Work

The SCA shall at all times have access to the Work. The Contractor shall maintain such access during the Work on the Project and shall facilitate the inspection of all components of the Work.

Section 6.02 - Notice for Testing

The Contract and applicable laws, rules, ordinances, and regulations, require that the Work be inspected and/or tested by the SCA and certain regulatory entities. The Contractor shall inform the SCA in a timely manner of readiness of the Work for inspection or testing and the date scheduled for said inspection or testing to be performed.

Section 6.03 - Testing

All materials and equipment used in the Work shall be subject to inspection and testing in accordance with accepted standards to establish conformance with the Specifications and suitability for the uses intended, unless otherwise specified in the Contract. If any Work shall be covered or concealed prior to the required inspection or testing being performed, or before obtaining the approval or consent of the SCA, that Work shall, if directed by the SCA, be uncovered for examination. Any inspection by the SCA, or by a testing laboratory on behalf of the SCA, does not relieve the Contractor of the responsibility to maintain quality control of materials, equipment and installation, and to conform to the requirements of the Contract. If any test results are below specified minimums, the SCA has the right to order additional testing and to reinspect the Work, after all deficiencies have been corrected. The cost of said additional testing, any additional professional services required, and any other expenses incurred by the SCA as a result of such additional testing, shall be paid by the Contractor.

Section 6.04 - Inspection of Work

A. All Work, materials, whether or not incorporated in the Work, processes of manufacture, and methods of construction, shall be, at all times and places, subject to the inspection of the SCA. The SCA shall be the sole judge of the quality and suitability of the Work, materials, processes of manufacture, and methods of construction, and their conformance to the Contract requirements. The SCA may direct that any Work not approved by the SCA shall, at no cost to the SCA, be immediately removed, reconstructed, made good, replaced or corrected by the Contractor to the satisfaction of the SCA. Corrective work shall include, but not be limited to, all Work or property destroyed or damaged by such removal or replacement. Any rejected material shall be removed immediately from the Site at no extra cost to the SCA. Acceptance of material and workmanship by the SCA shall not relieve the Contractor from the Contractor's obligation to replace all Work that is not in full compliance with the Contract.

B. If, after inspection, the SCA determines that it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work injured or not performed in accordance with the Contract, the compensation to be paid to the Contractor shall be reduced by any amount which the SCA deems equitable.

Section 6.05 - Reinspection of Work

The SCA may order that any part of the Work be reexamined by the SCA, and, if so ordered, the Contractor shall open or uncover such Work for reinspection by the SCA. If such Work is found to be in accordance with the Contract, the SCA shall pay the cost of reinspection; however, if such Work is not found to be in accordance with the Contract, the Contractor shall be responsible for the cost of reinspection and replacement of any defective or non-conforming Work.

Section 6.06 - Acceptance

A. The SCA's inspections shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract. No payment, either partial or full, by the SCA to the Contractor shall excuse any failure by the Contractor to comply fully with the Contract. The Contractor shall remedy all defects, whenever discovered, and shall incur the cost of any damage to other Work resulting therefrom. Any failure of the Contractor with regard to such remediation may be grounds for an evaluation proceeding by the SCA that may result in the imposition of penalties as set forth in Section 20.07 herein.

B. Upon discovery of non-conforming Work, the SCA shall give Notice to the Contractor specifying the nature of the non-conformance and the proposed correction. If Final Completion has occurred, the Contractor shall provide, within ten (10) business days after receipt of the Notice, a plan of correction, including a timetable for completion, for the approval by the SCA. Failure of the Contractor to respond shall be grounds for an evaluation proceeding by the SCA that may result in the imposition of any of the penalties, including debarment, set forth in Section 20.07 hereof.

C. The Contractor shall submit a Certificate of Substantial Completion Form to the SCA when, in the Contractor's opinion, Substantial Completion has been achieved. Acceptance of the Work as Substantially Complete and the date on which Substantial Completion has been achieved shall be within the sole discretion of the SCA. If appropriate, the SCA shall execute the Certificate of Substantial Completion Form, thereby acknowledging acceptance of the Work as Substantially Complete and setting forth the date on which Substantial Completion has been achieved.

Section 6.07 - Manufacturer's Guarantee

The Contractor shall secure from the manufacturers of all equipment and materials required under the Contract such manufacturer's standard warranties and guarantees (or such greater warranties and guarantees as the Specifications may require) in the name of such person or entity as the SCA may direct. Contractor further agrees to cooperate with the SCA in processing claims for adjustments due to the failure of equipment or material to meet said guarantees and warranties.

ARTICLE 7 - CHANGES IN WORK

Section 7.01 - Changes

A. The SCA may at times, without notice to the Contractor's surety and without invalidating the Contract, order Extra Work or make changes by altering, adding to, or deducting from the Work, and may adjust the Contract price accordingly, pursuant to Paragraph B, below. The Contractor shall not deviate from, add to, delete from, or make changes in the Work required to be performed hereunder unless so directed by a written Notice of Direction (Form of which is attached hereto as Appendix D) of the SCA signed by a properly authorized representative of the SCA. If the Contractor is directed by the SCA to perform Extra Work prior to an agreement on costs or time, the Contractor shall promptly comply with the Notice of Direction of the SCA. No claim for Extra Work or any change in the Work shall be allowed or made unless such Extra Work or change is ordered by a written Notice of Direction from the SCA. The Contractor shall submit it, and its direct Subcontractors', requests for additional costs utilizing the SCA Estimate Form, which will be provided to the Contractor by the SCA. The Contractor shall have no claim for lost profits as a result of any deletion or reduction in the Work.

B. The SCA shall determine the amount of any adjustment to the Contract price by Change Order, including a Unilateral and/or Allowance Change Order, based on either a negotiated basis utilizing estimated costs or on an actual time and materials basis, in its sole discretion:

1. The SCA may also elect to determine costs on a negotiated lump sum basis based on calculating estimated costs as follows:
 - (a) Estimate the fair and reasonable aggregate cost of:
 - (i) Labor, including all wages, required wage supplements and insurance required by law paid to employees directly employed at the Site, up to and including, the rank of foreman;
 - (ii) Materials; and
 - (iii) Equipment, excluding hand tools, employed exclusively and directly on the Extra Work. If the equipment is owned by the Contractor or a Subcontractor, the cost thereof shall be calculated at seventy (70%) percent of the standard "Green Book" rate for such equipment. If the "Green Book" does not list the item of equipment used, the cost thereof shall be calculated at seventy (70%) percent of the standard "Blue Book" rate for such equipment. If neither the "Green Book" nor the "Blue Book" lists the equipment, the SCA shall determine the rate based on seventy (70%) percent of a reasonable market rate for such equipment. If the equipment is rented by the Contractor or Subcontractor, the cost shall be calculated at one hundred (100%) percent of the rental cost actually paid.

- (iv) Premium portion of overtime pay, and the related additional costs incurred as a result of working overtime.

(Items (i), (ii), (iii), and (iv) above, hereinafter collectively, the “Estimated Cost”).

- (b) Add to the Estimated Cost certain markups as follows:

- (i) Where the Extra Work is performed solely by the Contractor, a sum equal to twenty (20%) percent of the Estimated Cost.
- (ii) Where the Extra Work is performed by a direct Subcontractor of the Contractor, (A) a sum equal to fifteen (15%) percent of the Estimated Cost for the benefit of each direct Subcontractor and (B) for the benefit of the Contractor, an additional sum, calculated on each direct Subcontractor’s Estimated Cost, equal to ten (10%) percent of the first ten thousand (\$10,000) dollars of the Estimated Cost, plus five (5%) percent of the next ninety thousand (\$90,000) dollars of the Estimated Cost, plus three (3%) percent of any sum in excess of one hundred thousand (\$100,000) dollars of the Estimated Cost. The sum on which the Contractor’s percentage is calculated shall always exclude the Subcontractor’s markup.
- (iii) Except as provided in Paragraph B.1(c) below, no markup shall be applied for the benefit of a sub-subcontractor.
- (iv) Where the Extra Work involves both an increase and a reduction in similar or related Work, the markup set forth in Paragraph B. 1(b) (i) or (ii), above, shall be applied only on the amount, if any, by which the cost of the increase exceeds the cost of the reduction.
- (v) Where the SCA issues a Notice of Direction to the Contractor to work overtime, the markup shall be fifteen (15%) percent, on the premium portion of the overtime incurred by the Contractor or by a direct Subcontractor of the Contractor. No other markups, including, without limitation, those markups elsewhere specified in B. 1 (b) and (c) of this Section 7.01, shall be applied to the premium portion of overtime pay, nor to any other costs incurred as a result of working overtime, except for a ten (10%) percent markup which shall be applied to the costs of the Site Superintendent.

- (c) Where Extra Work is performed by (i) the Contractor's HVAC Subcontractor using its sheet metal, insulator, or automatic temperature control sub-subcontractor, or (ii) the Contractor's plumbing Subcontractor using an insulator sub-subcontractor, the respective sub-subcontractor will receive a markup of fifteen (15%) percent of its Estimated Cost, and the respective Subcontractor will receive a markup of five percent (5%) of such Estimated Cost. Such markups shall be excluded from the sum on which the Contractor's markup is calculated.
 - (d) No markups shall be added to any bond premium costs.
 - (e) A ten (10%) percent markup shall be added to the cost of custodial permits.
 - (f) On Change Orders that include extended general conditions recoverable costs in accordance with Section 9.03G, a ten (10%) percent markup shall be added to the cost of such extended general conditions except for direct labor which will follow Section 7.01B-1(b). On Change Orders that include extended subcontractor general conditions recoverable costs in accordance with Section 9.03H, a seven and half (7-1/2) percent markup shall be added to the cost of such extended general conditions. Extended general conditions shall not be paid for home office costs.
2. The SCA may also elect to determine costs on an actual time and materials basis and may do so before the Contractor commences performance of the Extra Work as follows:
- (a) The actual cost of the Extra Work shall be equal to the aggregate actual cost of the items set forth in Paragraph B. 1 (a) (i), (ii), (iii), and (iv) and adjusted as in Paragraph B.1(b) above (hereinafter collectively, the "Actual Cost").
 - (b) The Actual Cost of the Extra Work will be verified by original written statements signed by the Contractor's representative at the Site and submitted daily for SCA signature. Each statement shall indicate:
 - (i) the name, rate of pay, and Social Security number of each worker, the number of workers of each trade, and the hours each worker was employed in the Extra Work; and,
 - (ii) the nature and quantities of materials and equipment used in the performance of the Extra Work.
 - (c) Where Extra Work is being performed on a time and materials basis, the Contractor shall send a Notice to the SCA when the Contractor has reached eighty (80%) percent of the SCA authorized amount for the Extra Work performed pursuant to the Change Order.

3. Each credit change order shall have the following markups applied: ten (10%) percent on the first ten thousand (\$10,000.00) dollars; five (5%) percent on the next ninety thousand (\$90,000.00) dollars; and three (3%) percent on all amounts over one hundred thousand (\$100,000.00) dollars.

C. Regardless of the method used by the SCA in determining the value of a Change Order, the Contractor shall submit to the SCA a Detailed Payment Breakdown of the Contractor's estimate of the value of any omitted or Extra Work.

D. Unless otherwise specifically provided for in a Change Order, the agreed compensation specified therein for Extra Work includes full payment for Extra Work covered thereby, and the Contractor waives all rights to any other compensation for such Extra Work, damage or expense, including claims for delay, damage or expense.

E. The Contractor shall and hereby agrees to produce any and all data the SCA may request, including but not limited to, time sheets, certified payrolls, foreman's reports, daily reports, bills and vouchers of Subcontractors, receiving documents, freight and trucking receipts, etc.

Section 7.02 - Form of Change Orders

All Change Orders shall be processed, executed and approved on the SCA's Change Order form, which is attached hereto as Appendix A and made a part hereof. The SCA will not accept any alteration to this form. No payment for Extra Work shall be due the Contractor unless the Contractor executes a Change Order on this form, except as provided in Section 7.03, Unilateral Change Orders.

Section 7.03 - Unilateral Change Orders

- A. A Unilateral Change Order may be issued by the SCA, at its option, in the following circumstances:
1. A dollar amount for the Work has been agreed to, but a negotiated settlement of a time extension request relating to the same Work has not been reached between the SCA and the Contractor.
 2. Any credit for which a negotiated settlement has not been reached between the SCA and the Contractor.
 3. Any increase in the cost of the Work in an amount which the SCA estimates to be less than fifty thousand (\$50,000) dollars for which a negotiated settlement has not been reached between the SCA and the Contractor.

B. Eighty (80%) percent of a Unilateral Change Order amount shall be available, on a pro rata basis, for progress payments to the Contractor as the Unilateral Change Order Work is performed. The remaining twenty (20%) percent will become available for payment upon execution of the Unilateral Change Order by the Contractor, or after Substantial Completion and execution of a general release by the Contractor.

C. Upon the SCA's execution, one hundred (100%) percent of a Unilateral Credit Change Order, including its markups, shall be charged to, and deducted from, the Contract Amount.

Section 7.04 - Allowance Change Orders

A. When a Notice of Direction (“NOD”) has been issued to the Contractor that results in an increase in the cost of the Work and such amount, as determined by the SCA in accordance with the terms of the Contract (the “Estimated Cost”), equals or exceeds fifty thousand (\$50,000) dollars, an Allowance Change Order will be prepared by the SCA in the amount of the Estimated Cost and submitted to the Contractor for execution.

B. The SCA may, at its option, and as a guideline for the Contractor’s payments to its Subcontractors, allocate percentages of the Estimated Cost in the Allowance Change Order to one or more of the Subcontractors, the cost of whose Work is affected by the NOD.

C. The SCA will make progress payments, as provided in this Contract, for up to eighty (80%) percent of the Allowance Change Order amount.

D. Within ninety (90) days from the issuance date of any NOD, the Contractor shall submit a detailed cost proposal for the cost resulting from such NOD, calculated in accordance with Subsection B of Section 7.01 hereof.

E. The SCA will not make any progress payments for the performance of an Allowance Change Order after ninety (90) days from the issuance date of the NOD relating to such Allowance Change Order, unless a detailed cost proposal is received from the Contractor within such ninety (90) day time period. In all events, the Contractor shall promptly and diligently comply with the NOD and perform the Work required thereunder. Upon receipt of the detailed cost proposal, progress payments for the performance of the Allowance Change Order shall resume in accordance with Paragraph C of this Section 7.04.

F. Upon receipt of the Contractor’s cost proposal, a fair and reasonable evaluation will be completed by the SCA and a final amount will be negotiated between the SCA and the Contractor. A Change Order will be issued to resolve the difference, if any, between the Allowance Change Order amount and the final amount negotiated between the SCA and the Contractor. The total net sum of the amounts added and/or credited under the Allowance Change Order and the finalized Change Order will constitute the total settled amount to be paid to the Contractor for the costs and/or credits resulting from an NOD.

Section 7.05 – Deemed Denial of Change Orders

A. All outstanding and unresolved Change Orders initiated by an NOD issued prior to Substantial Completion shall be deemed denied by the SCA nine (9) months after Substantial Completion.

B. All outstanding and unresolved Change Orders initiated by an NOD issued after Substantial Completion shall be deemed denied by the SCA nine (9) months after the SCA issued the NOD.

C. Unilateral Credit Change Orders are effective upon SCA execution.

ARTICLE 8 - DISPUTES

Section 8.01 - Claims for Extra Work, Compliance with the Contract

A. If the Contractor claims that any Work which the Contractor has been ordered to perform will be Extra Work, that the Contractor for any reason cannot comply with the terms and provisions of the Contract, or that any action or omission of the SCA is contrary to the terms and provisions of the Contract and will require the Contractor to perform Extra Work, the Contractor shall:

1. Promptly comply with the SCA's direction to perform the Work which the Contractor claims will be Extra Work; and
2. Proceed diligently, pending and subsequent to the determination of the SCA with respect to any said disputed matter, with the performance of the Work in accordance with all instructions of the SCA.

B. No claim for Extra Work shall be allowed unless it was performed pursuant to a written Notice of Direction of the SCA. The Contractor's failure to comply with any part of this Article shall be deemed to be:

1. A conclusive and binding determination on the part of the Contractor that said order, Work, action or omission does not involve Extra Work and is not contrary to the terms and provisions of the Contract; and
2. A waiver by the Contractor of all claims for additional compensation, time or damages as a result of said order, Work, action or omission.

C. The value of claims for Extra Work, if allowed, shall be determined by the methods described in the Contract including, but not limited to, Article 7 hereof.

Section 8.02 - Dispute Resolution Procedure

Disputes, which arise out of the Contract, excluding disputes arising under Articles 10 and 20 hereof, may be subject to the SCA's Dispute Resolution Procedure, as amended from time to time. A copy of the current Dispute Resolution Procedure is attached hereto as Appendix B and made a part hereof.

ARTICLE 9 - TIME OF COMPLETION; CLAIMS FOR DELAY; LIQUIDATED DAMAGES

Section 9.01 - Time of Completion

A. The Work shall commence on the date specified in the Notice to Proceed and shall be completed no later than the date of Final Completion specified in the Contract.

B. The date of commencement and the dates of Beneficial Occupancy (if applicable), Substantial Completion, and Final Completion, as specified in the Contract, are essential conditions of the Contract.

C. The Contractor shall perform and progress the Work in a prompt and diligent manner without interruption, and at such rate of progress as to insure timely Beneficial Occupancy, Substantial Completion, and Final Completion. If any item of Work falls behind the SCA approved Schedule or if, in the opinion of the SCA, the Contractor's progress is not sufficient to achieve Beneficial Occupancy or Substantial Completion or Final Completion as specified in the Contract, the Contractor shall take whatever steps are necessary to improve its progress, and shall, if requested by the SCA, increase the number of workers, the number of shifts, days of work, and the amount of construction plant and equipment and, to the extent permitted by law, institute or increase overtime operations, all without additional cost to the SCA, in order to regain any time lost and maintain the Schedule then in effect. If the Contractor's Work has not sufficiently progressed in the shop or elsewhere, as a result of which the Work in the field is likely to be delayed, the SCA shall have all the rights set forth in this Contract, including Article 10 hereof, regardless of the condition or progress of the Work at the Site.

D. Should the Contractor fail to commence or perform any Work, or otherwise fail to carry out any directions consistent with the terms of the Contract after Notice from the SCA, the SCA may have such Work done or materials furnished by others and deduct the cost thereof from the monies due or to become due under the Contract.

Section 9.02 - Beneficial Occupancy

A. If, before Final Completion the SCA desires to arrange for Beneficial Occupancy of the Work, or any part thereof, which is completed or partly completed, or to place or install therein equipment and furnishings, the SCA shall have the right to do so, and the Contractor shall in no way interfere with or object to such Beneficial Occupancy.

B. Beneficial Occupancy shall not affect the obligations of the Contractor for Work which is not in accordance with the requirements of the Contract or other obligations of the Contractor under the Contract.

C. The Contractor shall continue the performance of the Work in a manner which shall not unreasonably interfere with the use, occupancy, and operation by the occupant.

Section 9.03 - Claims for Delay and Documentation of Damages caused by Delay

A. Should the Contractor be or anticipate being delayed or disrupted in performing the Work hereunder for any reason, it shall promptly comply with the requirements of their Contract Specification Progress Schedule Section of the Supplementary Requirements. Failure of the Contractor to strictly comply with the requirements of this Section and the Progress Schedule Section may in the discretion of the SCA, be deemed sufficient cause to deny any extension of time on account of delay arising out of such condition. Failure of the Contractor to comply with the requirement of this section shall be deemed a conclusive waiver by the Contractor of any and all claims for damages for delay arising from such conditions and no right to recover on such claims shall exist.

B. Compensable Delays: The Contractor agrees to make a claim only for additional costs attributable to delay in the performance of this Contract necessarily extending the time for completion of the Work or resulting from Contractor initiated acceleration to maintain the Schedule, occasioned solely by any act or omission to act of the SCA listed below. The Contractor also agrees that delay from other causes, except Non-Excusable Delay detailed in Section 9.03(F), shall be compensated, if at all, solely by an extension of time to complete the performance of the Work.

1. Delays caused by the SCA's bad faith or its willful, malicious, or grossly negligent conduct;
2. Delays not contemplated by the parties;
3. Delays so unreasonable that they constitute an intentional abandonment of the Contract by the SCA; and
4. Delays resulting from the SCA's breach of a fundamental obligation of the Contract.

C. No claim may be made for any alleged delay in Substantial Completion of the Work if the Work will be or is substantially completed by the date of Substantial Completion provided for in the Notice to Proceed.

D. The provisions of this Section apply only to claims for additional costs attributable to delay and do not preclude determinations by the SCA allowing reimbursements for additional costs for Extra Work pursuant to Sections 7 and 8. To the extent that any cost attributable to delay is reimbursed as part of a change order, no additional claim for compensation under this Section shall be allowed.

E. Non-Compensable Delays: The Contractor agrees to make no claim for, and is deemed to have included in its bid prices for the various items of the Contract, the extra or additional costs attributable to any delays caused by or attributable to the items set forth below (For such items, the Contractor shall be compensated, if at all, solely by an extension of time to complete the performance of the Work):

1. The acts or omissions of any third parties, including but not limited to other contractors working on or adjacent to the Site of the Work, public or governmental bodies (other than the SCA), utilities or private enterprises, who are disclosed in the Contract Documents or are ordinarily encountered or generally recognized as related to the Work;
2. Any situation which was within the contemplation of the parties at the time of entering into the Contract, including any delay indicated or disclosed in the Contract Documents or that would be generally recognized by a reasonably prudent contractor as related to the nature of the Work, and/or the existence of any facility or appurtenance owned, operated, or maintained by any third party, as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as related to the nature of the Work;

3. Restraining orders, injunctions, or judgments issued by a court, which were caused by third parties, unless such order, injunction, or judgment was solely the result of an act or omission by the SCA;
4. Any labor boycott, strike, picketing, lockout, or similar situation;
5. Any shortages of supplies or materials, or unavailability of equipment, required by the Work;
6. Climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides, or other catastrophes or acts of God; or acts of war or of the public enemy or terrorist acts; disruption, outage, or power failure caused by a utility's inability or failure to provide service, pandemics, epidemics, outbreaks of infectious disease, or any other public health emergency, other states of emergency declared by the City, State, or Federal government, quarantine restrictions, and freight embargoes; including the SCA's reasonable responses thereto; and
7. Concurrent delay caused by acts or omissions of both the SCA and the Contractor.

F. Non-Excusable Delays: Any delay caused solely by acts, omissions, or inaction of the Contractor or by the Contractor's means and methods of construction to complete the Work, which will be subject to Liquidated Damages pursuant to Section 9.04.

G. Recoverable Costs shall be actual documented costs for the following:

1. Direct labor, including payroll taxes (subject to statutory wage caps) and supplemental benefits for extended clean up and site maintenance;
2. Necessary materials for site maintenance;
3. Reasonable rental value or documented actual costs for sidewalk sheds, scaffolding, temporary boiler, temporary boiler fuel tank and equipment other than small tools;
4. Extended Site overhead, field office rental, salaries of On-Site field office staff, On-Site project managers and superintendents, Project-specific storage, field office utilities and telephone, and field office consumables;
5. Labor escalation costs based on actual costs;
6. Material escalation costs based on applicable industry indices unless documentation of actual increased cost is provided; and
7. Schedule Updates, Custodial Permits, DOT Permits, DOB after hours Permits, expediting fees.

H. Recoverable Subcontractor Costs. When the Work is performed by a Subcontractor, the Contractor may be paid the actual and necessary costs of such subcontracted Work as outlined in Section 9.03G (1) through Section 9.03G (7).

I. Non-Recoverable Costs. The parties agree that the SCA will have no liability for the following items and the Contractor agrees it shall make no claim for the following items:

1. Profit, or loss of anticipated or unanticipated profit;
2. Consequential damages, including, but not limited to, construction or bridge loans or interest paid on such loans, loss of bonding capacity, bidding opportunities, or interest in investment, or any resulting insolvency;
3. Indirect costs or expenses of any nature except those included above 9.03 (C);
4. Home Office Overhead;
5. Contractor Supplied Vehicles, Cost for Insurance, Fuel and Tolls;
6. Employees Daily Expenses;
7. Bonuses, Incentives, Contributions to a Retirement Plan; and
8. Attorneys' fees and dispute and claims preparation expenses.

Section 9.04 - Liquidated Damages

A. If the Contractor fails to achieve Beneficial Occupancy and/or Substantial Completion and/or Final Completion within the times specified in the approved Schedule or any approved extension thereof, or Non-Excusable Delays on the part of the Contractor, the Contractor shall be liable to the SCA, for the amount specified in the Construction Contract, as liquidated damages for each and every continuous calendar day that the Contractor shall be in default, in addition to any other liability that the Contractor may have to the SCA.

B. The amount of liquidated damages is agreed upon by and between the Contractor and the SCA because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages which the SCA or its beneficiaries would sustain as a result of any delay by the Contractor in achieving Beneficial Occupancy and/or Substantial Completion and/or Final Completion within the times specified in the approved Schedule or any extension thereof. Liquidated damages may be assessed and/or retained from time to time by the SCA, and may be assessed and/or retained by the SCA against the Contractor and/or its Surety Company regardless of whether the Contractor was defaulted or terminated by the SCA.

C. Contractor recognizes that TIME IS OF THE ESSENCE for the completion of each and every portion of the Work within the time allowed in this Contract. In any instance in which additional time is allowed to achieve Beneficial Occupancy or Substantial Completion or Final Completion, TIME IS ALSO OF THE ESSENCE for the new time established by the relevant Change Order. The Contractor shall not be charged with liquidated damages or any excess cost if the delay is due to an unforeseeable cause beyond the control and without the fault or negligence of the Contractor, and approved by the SCA, including, but not limited to acts of God or of the public enemy, acts of the SCA, epidemics, quarantine, restrictions, strikes, freight embargoes, and unusually severe weather.

D. The time within which Contractor shall achieve Beneficial Occupancy or Substantial Completion or Final Completion, respectively, can only be extended by Change Order and may be extended for all the Work or only that portion of the Work altered by the Change Order.

ARTICLE 10 - TERMINATION

Section 10.01 - Termination for Cause

A. Upon the occurrence of any of the following events, the SCA may, in addition to all other rights the SCA may have as provided by law or equity, including the right to terminate the Contractor immediately because of a material breach, terminate the Contractor for cause:

1. The Contractor fails to commence Work by the date indicated in the Notice to Proceed after directed to do so by the SCA; or if
2. The Contractor abandons the Project; or if
3. The Contractor, without just cause, reduces its working force to a number which, if maintained, would be insufficient, in the opinion of the SCA Vice President of Construction Management (“VP CM”) or Chief Project Officer (“CPO”), to complete the Work in accordance with the Schedule; or if
4. The Contractor fails or refuses to increase its working force when ordered to do so by the SCA; or if
5. The Contractor fails to comply with the provisions of Article 13 – Safety - Protection of Property; or if
6. The Contractor fails to comply with the provisions of Article 14 – Insurance and Bonds; or if
7. The Contractor fails to comply with Section 20.02 – Labor Law Provisions; or if
8. The Contractor commences, at any time prior to the Final Completion of the Work, a voluntary proceeding under Title 11 of the United States Code (as now or hereafter in effect), or applies for or consents to the appointment of, or the taking of possession by, a receiver, liquidator, custodian, or trustee of the Contractor to perform its obligations hereunder; or
9. A proceeding is commenced against the Contractor 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 Contractor or of all or any substantial part of its assets, or similar relief in respect of the Contractor under any law relating to bankruptcy, insolvency or reorganization, or an order for relief shall be entered against the Contractor in an involuntary proceeding under Title 11 of the United States Code; or
10. The Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the Work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if

11. The Contractor is or has been willfully or in bad faith violating or breaching any of the provisions of this Contract; or if
12. The SCA is of the opinion that the Work cannot be completed within the time set forth in the Notice to Proceed or within the time to which such completion may have been extended, and the impossibility of timely completion is, attributable to conditions within the Contractor's control; or if
13. The Work is not completed within the time set forth in the Notice to Proceed or within the time to which the Contractor may be entitled to have such completion extended; or if
14. Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the Work, the Project, or the Contract (or for purposes of securing the Contract) was untrue or incorrect when made; or if
15. The Contractor has been terminated for cause or found in default of any other contract between the Contractor and the SCA; or if
16. The Contractor's prequalification is not renewed or is suspended or revoked for any reason; or if
17. The Contractor is the subject of a pending criminal investigation, complaint, or indictment, or a pending civil action brought by a government agency alleging illegal business practices.

B. Before the VP CM or CPO shall exercise their right to terminate the Contractor for cause, the VP CM, CPO, or their authorized representative shall give the Contractor an opportunity to be heard, upon not less than two (2) Days' notice.

C. The right to terminate the Contractor for cause for any of the grounds specified or referred to in Section 10.01 shall be exercised by sending the Contractor a notice, signed by the VP CM, or his/her authorized representative, setting forth the ground or grounds of termination (hereinafter referred to as a "Notice of Termination").

D. The Contractor hereby consents to the finality of any determination by the SCA reached in accordance with this Section 10.01. The Contractor acknowledges that, if it disagrees with any such determination or any part thereof, its only remedy shall be an appeal pursuant to Article 78 (New York Civil Practice Law and Rules).

E. In the event the Contractor is terminated for cause, the SCA, in addition to any other right or remedy the SCA might have, shall have the right, power and authority to complete the Work provided for in this Contract, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Contractor. The SCA may take possession of and may utilize such materials, appliances, and plant of the Contractor and its Subcontractors as may be on the Site and necessary or useful in completing the Work.

Section 10.02 - Termination for Necessity or Convenience

A. The SCA shall have the right to terminate the Contractor by giving Notice to the Contractor (a) if the Work is discontinued, cancelled or terminated for any reason, or (b) when the SCA otherwise deems termination to be in its best interest, whereupon this Contract shall be terminated on the date specified in such Notice. However, the Termination for Convenience shall not apply until a formal Notice to Proceed has been issued.

B. Upon receipt of the Notice of termination, the Contractor shall act promptly to minimize the expenses resulting from such termination. The SCA shall pay the Contractor the following:

1. The value of acceptable Work in place, considering the schedule of values and the Schedule, including Change Orders and retainage;
2. The reasonable cost of SCA approved Materials Specifically Fabricated, which have been fabricated or delivered but not paid for by the SCA and cannot be used otherwise, including reasonable cancellation fees of the supplier Subcontractor;
3. The reasonable cost of re-stocking, returning or canceling orders for standard materials not yet incorporated;
4. The reasonable cost of any work done to protect the Work in place, to clear the Site, and for demobilization; and
5. Five (5%) percent of the residual value of the current Contract price after deduction of Items 1-4 above.

In no event, however, shall the Contractor be entitled to compensation in excess of the total consideration of the Contract.

C. In the event of such termination, the SCA may take over the Work and prosecute same to completion by contract or otherwise and may take possession of and may utilize such materials, appliances, and plant of the Contractor and its Subcontractors as may be on the Site and necessary or useful in completing the Work.

Section 10.03 - When Termination for Cause to Be Deemed Termination for Necessity or Convenience

If the SCA wrongfully terminates the Contractor for cause, the rights and obligations of the parties will be the same as if the SCA had terminated the Contractor for convenience.

ARTICLE 11 - APPRENTICES; DAILY SIGNATURE LOG

Section 11.01 - Apprentices

The minimum wage rates, if any, and as herein specified, and as amended from time to time, for apprentices shall apply only to persons working with the tools of the trade, and learning under the direct supervision of journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the Contractor or any Subcontractor shall not exceed the number permitted by the applicable standards of the State Department of Labor, or, in the absence of such standards, the number permitted under the usual practices prevailing between the unions and the employers' association of the respective trades or occupations.

Section 11.02 - Daily Signature Log Requirements

Each day, the Contractor and its Subcontractors shall complete the SCA's Daily Signature Log for all hourly employees performing Work on the Site. In addition, the Contractor and its Subcontractors shall insure that all employees listed on the daily log verify the information on the log applicable to them by signing on the appropriate line thereof. The current day's Daily Signature Log shall be maintained at the Site for the SCA's inspection.

The Contractor and its Subcontractors shall deliver the Daily Signature Log originals to the SCA Mail Room, Attention: Labor Law Compliance at 30-30 Thomson Avenue, Long Island City, NY 11101, every month in accordance with the SCA's directions and procedures.

The Contractor and its Subcontractors shall deliver the Daily Signature Log originals to the SCA Mail Room, Attention: Labor Law Compliance at 30-30 Thomson Avenue, Long Island City, NY 11101, every month in accordance with the SCA's directions and procedures.

The Contractor and its subcontractors shall submit the Daily Signature Log to the SCA electronically in accordance with the SCA's directions and procedures.

ARTICLE 12 - WORK OF OTHERS

Section 12.01 - Work of Others

The SCA may from time to time, in its discretion, conduct work or award contracts to others to conduct work which may proceed simultaneously with the execution of the Work. The Contractor shall coordinate its operations with those of any others as directed by the SCA. Cooperation shall be required in the arrangements for access, the storage of material, and in the detailed execution of the Work.

ARTICLE 13 - SAFETY - PROTECTION OF PROPERTY

Section 13.01 - Accident Prevention

The Contractor shall, at all times, take every safety precaution against injury to persons, damage to property and/or the Work, and shall comply with all applicable laws, standards, ordinances, rules, regulations and orders of any public entity for the safety of persons and property in accordance with the requirements of the Contract.

Section 13.02 - Building Code Safety Requirements

The Contractor agrees to comply, and require all Subcontractors to comply, with the provisions of all applicable State and City laws, rules, regulations and requirements applicable during the performance of the Contract pertaining to building code safety requirements, including, but not limited to, the New York City Building Code's Chapter 33, titled "Safeguards During Construction or Demolition". The Contractor agrees that noncompliance with this Section 13.02 shall constitute a material breach of the Contract and may result in the termination of the Contract for cause and the disqualification of the Contractor from bidding, contracting, or subcontracting on SCA projects for up to five (5) years.

Section 13.03 - SCA Safety Manual

A. The Contractor shall be bound and shall cause all Subcontractors to be bound by each and every term of the SCA Safety Manual, which is available at the following link: <http://www.nycsca.org/Doing-Business/Safety-Manual-Checklists> and made a part hereof, including its Updates and all future Updates made during the performance of the Contract.

B. The SCA shall give Notice to the Contractor if the SCA determines that the Contractor has violated any term of the Safety Manual or has not complied with the loss control or other safety requirements specified by the SCA or its insurance carrier. The Safety Manual is a Contract Document. The SCA shall determine whether the Contractor's violation of any provision of the Safety Manual shall constitute a material breach of the Contract.

Section 13.04 - Protection of Work and Property

A. The Contractor shall, at all times, protect all persons, the Site, adjacent property, and the Work from injury and/or loss in connection with the Work. In carrying out its obligations hereunder, the Contractor understands that the Project is an educational facility which may be or will become fully or partially occupied and utilized by teachers, students, and others, and therefore, takes this into account in pricing, scheduling and planning its Work.

B. The Contractor shall have full responsibility to install, protect, and maintain all materials and supplies in proper condition whether stored on or off the Site and forthwith repair, replace and make good any damage thereto until Final Completion. The Contractor shall maintain an inventory of all materials and supplies for the Work that are delivered to the Site, stored at the Site, or delivered to and stored at off-Site storage facilities.

Section 13.05 - Adjoining Property

The Contractor shall protect all adjoining property and shall repair or replace any property damaged or destroyed during the progress of the Work.

Section 13.06 - Construction Site Emergency/SCA Notification

A. Should an emergency, as defined in Article 1 hereof, arise, the Contractor shall immediately call 911 for appropriate response (fire, ambulance etc.). Immediately thereafter, the Contractor shall contact the SCA Project Officer of the emergency either in person or by telephone. E-mails, voice-mails, text messages, facsimiles and similar methods of non-verbal notification are unacceptable as initial contact. If the Project Officer cannot be reached, the next level of Supervisor must be contacted until a SCA Representative has been contacted in person. Further information requirements shall be as stated by the SCA Safety Manual.

B. In case of incidents in anyway involving the operation of a school or school personnel (e.g. 911 calls, hazmat issues, thefts, vehicle accidents, press/media etc.), the Contractor shall immediately notify the SCA of the incident either in person or by telephone.

C. The Contractor shall obtain the SCA's emergency contact information prior to the start of work. The Contractor shall be obligated to post the Accident or Incident Notification Procedure visibly on site.

D. The Contractor shall assure that all appropriate site personnel have the contact information and are fully aware of the Notification requirements.

Section 13.07 - OSHA and NYC DOB Course Completion and Certification

All Work under this Contract performed by either by the Contractor, Subcontractors or any other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be certified prior to performing any Work on the Project as having successfully completed a course requirements as mentioned in the following link:

<http://www.nycsca.org/Doing-Business/Safety-Manual-Checklists>

Section 13.08 - Failure to Comply with Provisions of Article 13

The SCA may, at its sole option, and in addition to all other rights the SCA may have as provided by law or equity, terminate this Contract for cause under Section 10.01 hereof, if the Contractor fails to comply with the provisions of this Article 13. The Contractor acknowledges that, if it disagrees with any such determination by the SCA, its only remedy shall be an appeal pursuant to Article 78 of the New York Civil Practice Law and Rules.

ARTICLE 14 - INSURANCE AND BONDS

Section 14.01 - Insurance

A. The SCA will maintain an Owner-Controlled Insurance Program that will include the coverages listed in its Owner Controlled Insurance Program Insurance Manual, which is available here: <http://www.nycsca.org/Doing-Business/Insurance> and made a part hereof, subject to all policy restrictions, exclusions, terms and conditions, and deductibles. Contractors and their Subcontractors, if any, are specifically directed to the section addressing deductibles, for which Contractors and eligible and enrolled Subcontractors are responsible. The Contractor and each eligible and enrolled Subcontractor shall be included as named insured in the SCA's Owner Controlled Insurance Program, as specified in such Insurance Manual. The Insurance Manual is subject to change and amendment from time to time. It is the responsibility of the Contractor and Subcontractors to determine their actual exposures and to obtain additional insurance, if necessary.

B. The Insurance Manual also specifies the coverages that must be obtained and maintained by the Contractor and Subcontractors in connection with their Work under this Agreement.

C. Among other coverages, the SCA will not provide the Contractor or any Subcontractor, with insurance for the Contractor's or any Subcontractor's, plant, tools or equipment. The SCA's insurance program does not include coverage for liability or other exposures arising out of the ownership, maintenance, or use of automobiles. The SCA is affording Contractor's Pollution Liability Coverage for third-party environmental exposures only, which will include coverage for pollution, or hazardous material, including, but not limited to, asbestos abatement, lead paint abatement, and any other hazardous material abatement.

D. The Contractor agrees to submit to the SCA an application for each eligible Subcontractor for enrollment in the SCA insurance program. Failure to submit such an application may result in exclusion from the insurance program for any unenrolled Subcontractor and a risk of reduction in coverage of the Contractor for claims arising out of the activities of any unenrolled Subcontractor.

Section 14.02 - Contract Security (*Not Applicable to Mentor Projects*)

A. The Contractor shall furnish a Construction Performance Bond, in the form set forth in the Construction Contract in an amount at least equal to one hundred (100%) percent of the Contract Award Amount as security for the faithful performance of the Contract and also a Labor and Material Payment Bond, in the form set forth in the Construction Contract, in an amount at least equal to one hundred (100%) percent of the Contract price for the payment of all persons performing labor or providing materials in connection with the Work. The surety on each such bond shall be a surety company **listed on the Department of the Treasury's Listing of Approved Sureties**, authorized to do business in the State and satisfactory to the SCA.

B. Each and every executed bond should be accompanied by (1) appropriate acknowledgments of the respective parties; (2) a duly certified copy of a power-of-attorney or other certificate of authority where the bond has been executed by an agent, officer or other representative of the principal or surety; (3) a duly certified extract from the by-laws or corporate resolutions of the surety under which a power-of-attorney or other certificate of authority of its agent, officer or representative was issued; and (4) a duly, certified copy of the latest published financial statement of assets and liabilities of the surety.

Section 14.03 - Additional or Substitute Bond (*Not Applicable to Mentor Projects*)

A. If at any time the SCA shall become dissatisfied with any surety or sureties upon the Construction Performance Bond, or the Labor and Material Payment Bond, or if for any other reason said bond or bonds shall cease to be adequate security to the SCA, the Contractor shall, within five (5) days after Notice from the SCA to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the SCA. The premiums on said bond or bonds shall be paid by the Contractor. No further payments to the Contractor shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the SCA.

B. If the Contract Award Amount, as set forth in the Contract Agreement, is increased by the issuance of any Change Order, without further Notice from the SCA, the Contractor shall take all appropriate measures to increase its bonding hereunder, to one hundred (100%) percent of the increased Contract price. At the time of Contract close-out, when all Change Orders have been executed, the Contractor shall furnish the SCA with an invoice from the Contractor's surety reflecting all such increases. At such time, an appropriate Change Order shall be issued, if necessary.

Section 14.04 - Failure to Comply with Provisions of Article 14

The SCA may, at its sole option, and in addition to all other rights the SCA may have as provided by law or equity, terminate this Contract for cause under Section 10.01 hereof, if the Contractor fails to comply with the provisions of Article 14. The Contractor acknowledges that, if it disagrees with any such determination by the SCA, its only remedy shall be an appeal pursuant to Article 78.

ARTICLE 15 - PAYMENT

Section 15.01 - Provision for Payment; Request For Payment

A. The Contractor shall submit a Detailed Payment Breakdown in the form and level of detail prescribed by the SCA prior to the Contractor's first application for payment. The Detailed Payment Breakdown shall establish the minimum level of detail required for the Contractor's payment breakdown. The SCA reserves the right to request additional and more detailed Contractor's Detailed Payment Breakdowns, as it deems necessary. Further, the SCA reserves the right to approve only those cost distributions which, in the SCA's opinion are reasonable, equitably balanced and correspond to the quantities in the Contract Documents.

B. The SCA may make a partial payment to the Contractor on the basis of an approved estimate of the Work performed during each preceding business month. The SCA shall retain five (5%) percent of the amount of each estimate. As a condition precedent to payment, on a monthly basis in accordance with the agreement with the SCA, the Contractor shall submit a Request for Payment in the form attached hereto as Appendix C and made a part hereof. Such Request for Payment must be fully and properly completed to be processed by the SCA. In no event shall any SCA signature on the Request for Payment signify acceptance of any Work. Furthermore, any partial payment made shall not be construed as a waiver of the right of the SCA to require the fulfillment of all the terms of the Contract.

C. In preparing estimates for partial payments, material delivered to the Site, and properly stored and secured at the Site, Material in Short or Critical Supply, or Material Specially Fabricated and other material approved to be stored off-Site under such conditions as the SCA shall prescribe, may be taken into consideration. Unless otherwise provided by the SCA, the conditions for the payment of material stored off-Site shall include, but not be limited to, the following: (a) the material shall be properly stored in a secured location approved by the SCA; (b) the material will be covered under the SCA builder's risk policy subject to all policy limits and restrictions; and (c) the material shall be inspected by the SCA to assure compliance with Project specifications. In order to seek payment pursuant to this Section, the Contractor, within ninety (90) days of the award of this Contract, must submit a list to the SCA of the Material in Short or Critical Supply, Material Specially Fabricated for the Work at the Site, or material which for any other reason must be stored off-Site. Such list must be accompanied by a detailed backup substantiating the Contractor's position. All costs related to the storage of materials or Material in Short or Critical Supply, or Material Specifically Fabricated for the Work at the Site, are the sole responsibility of the Contractor. In addition to the above, the Contractor must demonstrate that the material stored either at the Site or off-Site is paid for in full and upon payment therefor becomes the sole property of the SCA.

D. With every requisition for payment, the Contractor shall submit certified payrolls in a form acceptable to the SCA and in compliance with the requirements of the State Labor Law, including, without limitation, a certification of compliance with the OSHA course training requirements set forth in Labor Law Section 220-h and Section 13.07 of this Contract. Compliance with the OSHA course completion requirements shall be certified for each laborer, worker and mechanic on the first requisition for payment on which the laborer, worker or mechanic is named as having performed Work on the Project. Before receipt of any payment, the Contractor shall also submit such other documents as may be required by the State Labor Law.

E. After the SCA has determined that the Work is Substantially Complete, the Contractor shall submit to the SCA, for its approval, a detailed estimate of the value of punch list items, as set forth by the SCA, and a schedule for completion of those items. The punch list shall include minor corrections to the Work and required documentation not previously submitted by the Contractor. The Contractor must complete the punch list items before the SCA will acknowledge Final Completion. The failure to include an item on the punch list does not relieve the Contractor of the responsibility to complete all the Work in accordance with the Contract. Accordingly, the punch list may be expanded until Final Completion is certified by the SCA.

Appropriate payments may be withheld to cover the value of the punch list items pursuant to this Section. The SCA shall review the Contractor's estimated value of the punch list items and the completion schedules therefor, and make the final determination as to their validity.

The SCA, when all the Work is Substantially Complete, shall pay to the Contractor the balance due pursuant to the Contract less:

1. four (4) times the value of the remaining punch list items to be completed; plus
2. an amount, calculated in accordance with this Contract, necessary to satisfy all claims, liens or judgments against the Contractor; plus
3. any amounts held in accordance with other terms and conditions of this Contract.

As the items included on the punch list are completed and accepted by the SCA, it shall pay the appropriate amount pursuant to the duly completed and submitted monthly requisitions.

Section 15.02 - Acceptance of Payments After Substantial Completion
Constitutes a General Release of the SCA

- B. The acceptance by the Contractor of payments after Substantial Completion shall each be, and shall operate as, a general release of the SCA of all claims by and all liability to the Contractor for all things in connection with the Contract and the Work, and of every act and neglect of the SCA and others relating to or arising out of the Contract and the Work, except for claims, if any, specifically listed and described in detail in a Schedule (including the dollar amount(s) and number of days of Schedule extension, if any) which is prepared by the Contractor, countersigned by the Chief Project Officer of the SCA, and attached to the general release referred to in this Section 15.02. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations and liabilities, including, without limitation, those under the Contract, the Construction Performance Bond, and the Labor and Material Payment Bond.
- C. Notwithstanding any other provision of the Contract to the contrary, payments pursuant to Section 15.01.E. shall not become due until the Contractor submits to the SCA a general release acceptable in both form and content to the SCA.

Section 15.03 - Contractor's Payment to Subcontractors

A. Contractor shall make prompt payment to the HVAC, Plumbing and Gas Fitting, and Electrical Subcontractors. Within seven (7) calendar days of the receipt of any payment from the SCA, the Contractor shall pay to each such Subcontractor that portion of the proceeds of such payment representing the value of the Work performed by each such Subcontractor, based upon the actual value of the Subcontract which has been approved and paid for by the SCA, less an amount necessary to satisfy any claims, liens, or judgments against such Subcontractor, which have not been suitably discharged and less any amount retained by the Contractor as provided herein. The Subcontract may provide that the Contractor may retain not more than five (5%) percent of each payment to such Subcontractor, or not more than ten (10%) percent of each such payment, if prior to entering into the Subcontract, such Subcontractor is unable or unwilling to provide, at the request of the Contractor, a construction performance bond and a labor and material payment bond, both in the amount of the Subcontract.

B. If any Subcontractor in the above trades shall notify in writing the SCA and the Contractor that the Contractor has failed to make a payment as provided above, and such failure shall continue for five (5) calendar days after receipt of such Notice without proof of payment by the Contractor or Notice to the SCA that such payment is in dispute, the SCA shall withhold from amounts then or thereafter becoming due or payable to the Contractor, to the extent that said amounts are not included in authorized payment to the Contractor representing the value of the work done by other Subcontractors in the above trades, and the SCA shall:

1. remit such amount withheld to said Subcontractor, and charge such payment to the account of the Contractor; or,
2. if such payment is in dispute, deposit such amount in a separate interest bearing account pending resolution of the dispute; or,
3. if such payment is in dispute, commence an interpleader action to determine entitlement to the payment.

C. The Contractor shall make prompt payment to all other Subcontractors. Within fifteen (15) calendar days of the receipt of any payment from the SCA, the Contractor shall pay each of these Subcontractors the portion of the payment from the SCA representing the value of the Work performed by the Subcontractor, less an amount necessary to satisfy any claims, liens, or judgments against the Subcontractor which have not been suitably discharged and less any amount retained by the Contractor as provided herein. The Subcontract may provide that the Contractor may retain not more than five (5%) percent of each payment to the Subcontractor or not more than ten (10%) percent of each such payment, if prior to entering into the Subcontract the Subcontractor is unable or unwilling to provide, at the request of the Contractor, a construction performance bond and a labor and material payment bond, both in the amount of the Subcontract. Contractor warrants and represents that it will comply with Section 15.03 and shall execute such certificates or statements as the SCA may require.

- D. The 2021-2015 PLA (as defined below) program work shall be limited to designated rehabilitation and renovation construction contracts bid and let by the SCA after the effective date of the Agreement for renovation and renovation work performed on NYC Public Schools and other work as specified by the Authority. The PLA applies to all such specified projects and to all Mentor and Graduate Mentor Contractors who elect to participate subject to the thresholds described in the Agreement. In the event of a conflict between the provisions of the PLA and this Subsection D, the terms of the PLA shall govern.

As used in this Subsection D the term “Delinquent Subcontractor” shall mean any Subcontractor who has failed to make fringe benefits contributions as provided in the PLA to any Union or Fund; the term “Fund” shall mean any of the jointly trusteed employee benefits funds designated in Schedule A to the PLA; and the term “Union” shall mean any union that is bound by the PLA.

If the Contractor or any Subcontractor is delinquent in the payment of fringe benefit contributions, and any Union or Fund shall notify the SCA, the Contractor, and the Delinquent Subcontractor, if any, in writing that the Contractor or a Delinquent Subcontractor has failed to make fringe benefit contributions to a Union or Fund as provided in the PLA, and the Contractor or the Delinquent Subcontractor shall fail, within five (5) calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the Union or Fund is in dispute, the SCA shall withhold from amounts then or thereafter becoming due and payable to the Contractor, an amount equal to that portion of such payment due to the Contractor that relates solely to the Work performed by the Delinquent Subcontractor, or solely to the Work performed by the Contractor, if the Contractor is delinquent, which the Union or Fund claims to be due it, shall remit the amount when and so withheld to the Union or Fund, and shall deduct such payment from the amounts then otherwise due and payable to the Contractor, which payment shall, as between the Contractor and the SCA, be deemed a payment by the SCA to the Contractor; provided, however, that in any month, such withholding shall not exceed the amount contained in the Contractor’s monthly invoice for Work performed by the Delinquent Subcontractor, or the amount for Work performed by the Contractor itself, if the Contractor is the delinquent. The Union or the Fund shall include in its notification of delinquent payment of fringe benefits only such amount as it asserts the Contractor or the Delinquent Subcontractor failed to pay on this specific Contract and project against which the claim is made, and the neither the Union nor the Fund shall include in such notification any amount that the Contractor or the Delinquent Subcontractor may have failed to pay on any other SCA or non-SCA contract or project.

In the event the Contractor or the Delinquent Subcontractor shall notify the SCA that the claim of the Union or the Fund is in dispute, the SCA shall withhold from amounts then or thereafter becoming due and payable to the Contractor, an amount equal to that portion of such payment due to the Contractor that relates solely to the Work performed by the Delinquent Subcontractor, or solely to the Work performed by the Contractor, if the Contractor is delinquent, which the Union and/or the Fund claims to be due it, and deposit such amount, when and so withheld, in a separate interest bearing account, pending resolution of the dispute pursuant to the Union's applicable collective bargaining agreement, listed in Schedule A to the PLA, and the amount so deposited, together with the interest thereon shall be paid to the party or parties ultimately determined to be entitled thereto, or until the Contractor or the Delinquent Subcontractor and Union or Fund shall otherwise agree as to the disposition thereof; provided, however, that such withholding shall not exceed the amount contained in the Contractor's monthly invoice for Work performed by the Delinquent Subcontractor, or for Work performed by the Contractor, if the Contractor is delinquent.

In the event the SCA is required to withhold amounts from the Contractor for the benefit of more than one Union or Fund, the amounts so withheld, in the manner and amount prescribed in this Subsection D, shall be applied to or for such Union or Fund in the order in which the written notices of nonpayment have been received by the SCA and, if more than one such notice was received on the same day, proportionately, based upon the total dollar amounts of Union and/or Fund claims received on such day.

Nothing herein contained shall prevent the SCA from commencing an interpleader action to determine entitlement to a disputed payment in accordance with Section 1006 of the New York Civil Practice Law and Rules, or any successor provision thereto.

Payment to a Union or Fund under this Subsection D shall not relieve the Contractor or a Delinquent Subcontractor from responsibility for the Work covered by the payment. Except as otherwise provided in this Subsection D, there is, and shall be, no obligation on the part of the SCA to pay any Union or Fund, nor shall anything provided in this Subsection D, serve to create any relationship in contract or otherwise, implied or expressed, between the Union and/or any Fund and the SCA.

E. Nothing herein shall relieve the Contractor from its obligation to complete the Work, nor shall anything herein create any relationship in contract or otherwise, implied or expressed, between any Subcontractor and the SCA.

Section 15.04 - Liens

Upon receipt of a Notice of Lien, the SCA shall withhold a sum equal to one and one-half (1.5x) times the amount stated to be due in the Notice of Lien and shall deduct such sum from payments due the Contractor. This sum shall be withheld until the lien is discharged.

Section 15.05 - Withholding of Payments

A. If the Work is not performed in strict accordance with the Contract, or if the work of any other contract between the Contractor herein and the SCA is not performed in strict accordance with its terms, or if the SCA has a claim against the Contractor for any other reason whatsoever, or if any claim, just or unjust, which arises out of or is related to the performance of the Work is made against the SCA, the SCA shall have the right to withhold from any payment due the Contractor under any contract, final or otherwise, such sums as the SCA may deem sufficient to protect it against delays or loss or to assure the payment of such claims. The SCA shall have the right to apply sums so withheld in any manner, as the SCA shall deem proper, to satisfy claims or secure protection. Such application of those amounts shall be deemed payments for the account of the Contractor.

B. In the event that wages have been paid at a rate less than the prevailing wage, the SCA shall have the right to withhold from any payment, final or otherwise, due and owing to the Contractor, such sums as may be necessary to pay the laborers, workers and mechanics employed on the Work, the difference between the sums such persons should have received as wages and the sums such persons actually received, and to pay such amounts to them.

C. The provisions of this Section 15.05 shall be construed solely for the benefit of the SCA and shall not be construed to require the SCA to determine or adjust any claim or dispute between the Contractor and any other person or persons. Any forbearance or action by the SCA pursuant to these provisions shall not give rise to any liability on the part of the SCA.

D. The SCA, at its option, may withhold payments for any Work which has been performed by a Subcontractor not approved by the SCA.

E. The SCA, at its option, may withhold all or a portion of the payments otherwise due to the Contractor, until the Contractor has submitted the Schedules, and revisions thereof, as required by this Contract.

F. Funds remaining in the Contract for which no Work has been performed for more than six (6) years may, at the SCA's discretion, be returned to SCA General Fund or other appropriate account.

Section 15.06 - Prevailing Wage Enforcement

The Contractor agrees to pay for the cost of any audit and/or investigation conducted by or on behalf of the SCA which discovers a failure to pay prevailing wages by the Contractor or its Subcontractor(s). The Contractor also agrees that should it fail or refuse to pay for any such audit and/or investigation, the SCA is authorized to deduct from the Contractor's account, an amount equal to the cost thereof. The Contractor acknowledges that, if it disagrees with any determination of the SCA with respect to prevailing wages, its only remedy shall be an appeal pursuant to Article 78.

The Contractor shall be held jointly and severally liable for any prevailing wage violations by the Contractor and any of its subcontractors of any tier, including the costs of any investigations conducted by the SCA that discover or substantiate any such prevailing wage violations.

Section 15.07 - SCA's Right to Audit and Inspection of Records

The Contractor shall maintain and keep and shall require any Subcontractor to maintain and keep, for a period of at least six (6) years after the date of Final Completion, all documents, records and other data relating to the Work. The SCA have the right to inspect, copy and audit, and shall have access during normal business hours to all documents, records and other data of the Contractor relating to the Work or to any amounts for which the Contractor has been compensated, or claims it should be compensated by the SCA. The Contractor shall obtain for the SCA the same access to such records and documents of its Subcontractors. Such access to shall be provided both before and during a period of six (6) years after Final Completion.

No provision in this Contract giving the SCA a right of access to records and documents is intended to impair or affect any right of access to records and documents which the SCA would have in the absence of such provision.

Section 15.08 - State Bank Account

The Contractor shall maintain and fund an account in a bank located within the State into which all payments by the SCA to the Contractor shall be deposited by the Contractor. All payments by the Contractor to its Subcontractors shall be made from such account.

Section 15.09 - No Estoppel or Waiver

The SCA's acceptance or approval of the Work, issuance of a Change Order or payment for the Work, final or otherwise, made under this Contract, shall not preclude the SCA from showing, at any time, the true amount and character of the Work performed, or from showing that such acceptance or approval, issuance of a Change Order or payment for the Work was incorrect or was improperly issued or made. Notwithstanding any acceptance or approval of the Work, issuance of a Change Order or payment for the Work, the SCA shall not be precluded or estopped from recovering from the Contractor any amounts which may have been paid to the Contractor or for the Contractor's account, as a result of damages which the SCA may sustain by reason or failure of the Contractor to comply strictly with the terms and conditions of the Contract.

ARTICLE 16 - TAX EXEMPTION

Section 16.01 - Tax Exemption

A. The SCA is exempt from payment of State and local taxes, and sales and compensating use taxes of the State and of cities and counties on all materials and supplies incorporated into completed Work. These taxes are not to be included in bids, Change Orders or any compensation to the Contractor. This exception does not apply to tools, machinery, equipment, or other property leased by or to the Contractor or to supplies and materials which, even though they are consumed, are not incorporated into the completed Work, and the Contractor and all Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on said leased tools, machinery, equipment or other property and upon all said unincorporated supplies and materials.

B. The Contractor shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule or regulation.

D. Appendix G, Tax Exemption, is attached hereto to assist the Contractor in its compliance with the mandates of this Article 16.

ARTICLE 17 - GUARANTEE

Section 17.01 - Guarantee

A. Contractor guarantees that all Work performed and all equipment and materials furnished will conform to the Contract Documents as to kind, quality, function, design, and characteristics of material and workmanship. Contractor shall remove, replace, and repair, at its sole cost and expense, all defects in workmanship, equipment, materials, ratings, capacities, or design characteristics occurring in or to the Work including, without limitation, any portion of the Work furnished or performed by any Subcontractor, within one (1) year (or such longer period as may be specified in the Contract or in warranties) from the date of Final Completion.

B. The rights and remedies afforded the SCA under this Article are in addition to, and not in lieu of, and do not in any way affect, change, alter, modify, vary or prejudice any right, remedy, or recourse which the SCA may have under other provisions of the Contract or pursuant to law.

ARTICLE 18 - STANDARD PROVISIONS

Section 18.01 - Provisions Required by Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall read and shall be enforced as though so included herein.

Section 18.02 - Laws Governing the Contract

The Contract shall be governed by the laws of the State.

Section 18.03 - Assignments

The Contractor shall not assign the Contract in whole or in part without prior written consent of the SCA, and any such attempted assignment shall be null and void. If the Contractor assigns all or part of any monies due or to become due under the Contract, the instrument of assignment shall contain a clause substantially to the effect that the Contractor and assignee agree that the assignee's right in and to any monies due or to become due to the Contractor shall be subject to all prior claims for services rendered or materials supplied in connection with the performance of the Work.

Section 18.04 - No Third Party Rights

Nothing in the Contract shall create or shall give to third parties any claim or right of action against the SCA, the Department, the City, the State, or any other owner of the Site at which the Work is being carried out beyond such as may legally exist irrespective of the Contract.

Section 18.05 - Contract Deemed Executory

The Contractor agrees that the Contract shall be deemed executory to the extent of monies available and that no liability shall be incurred by the SCA beyond the monies available therefor.

Section 18.06 - Prohibited Interests

No person authorized on behalf of the SCA to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any Subcontract in connection with the Work, shall become personally interested, directly or indirectly, in the Contract. No officer, employee, architect, attorney, engineer, inspector or consultant of or for the SCA authorized on behalf of the SCA to exercise any legislative, executive, supervisory, design or other similar function in connection with the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, Subcontract, insurance contract, or any other contract pertaining to the Work.

Section 18.07 - Waiver of Remedies

Inasmuch as the Contractor can be compensated adequately by money damages for any breach of the Contract which may be committed by the SCA, the Contractor agrees that no default, act or omission of the SCA shall constitute a material breach of Contract entitling the Contractor to cancel or rescind the same or to suspend or abandon performance thereof; and the Contractor hereby waives any and all rights and remedies to which the Contractor might otherwise be or become entitled to because of any wrongful act or omission of the SCA saving only the Contractor's right to money damages. Notwithstanding the generality of the foregoing, in the event the SCA terminates this Contract for cause, the Contractor hereby waives all remedies to which it might otherwise be entitled and agrees that its only remedy shall be an appeal pursuant to Article 78.

Section 18.08 - Contractor Relationship

The relationship created by the Contract between the SCA and the Contractor is one of an independent contractor, and it is in no way to be construed as creating an agency relationship between the SCA and the Contractor.

Section 18.09 - Entire Agreement

The Contract embodies the entire agreement and understanding of the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

Section 18.10 - Successors and Assigns; Headings; Counterparts

All terms of the Contract, whether so expressed or not, shall be binding upon the respective permitted successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and by their respective permitted successors and assigns. The headings of the Contract are for purposes of reference only and shall not limit or otherwise affect the meaning thereof. The Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 18.11 - Claims Against Employees of the SCA

The Contractor shall make no claim against any trustee, officer, official or employee of the SCA, personally, for any reason whatsoever, including without limitation, for any act, omission, or statement in connection with the Contract.

Section 18.12 - Unenforceable Provisions

If any court determines that any provision of the Contract is void or unenforceable, the Contract shall remain in effect in accordance with its terms, excluding the provision declared void or unenforceable, subject to the other terms, covenants, conditions and provisions of this Contract.

Section 18.13 - Confidentiality

A. The Contractor acknowledges that certain of the SCA's valuable, confidential and proprietary information may come into the Contractor's possession. Accordingly, the Contractor agrees to hold all information it obtains from or about the SCA in strictest confidence, not to use such information other than in the performance of the Work, and to cause any of its employees or Subcontractors to whom such information is transmitted to be bound to the same obligation of confidentiality to which the Contractor is bound. The Contractor shall not communicate the SCA's information in any form to any third party without the SCA's written consent, unless withholding such information would violate the law or create the risk of significant harm to the public. In the event of any violation of this provision, the SCA shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which the SCA may be entitled. The Contractor shall not be liable for disclosure or use of such information if it was in the public domain at the time it was disclosed.

B. The Contractor shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the SCA or the Work performed in connection with this Contract. The Contractor shall obtain a similar agreement from firms, Subcontractors and others employed by it. The SCA reserves the right to withhold or release all information, as well as to time its release, form and content. This requirement shall survive the expiration of this Contract.

ARTICLE 19 - AFFIRMATIVE ACTION; EMPLOYER AND PROFESSIONAL RESPONSIBILITIES

Section 19.01 - Affirmative Action

The Contractor shall comply with, and assist the SCA in implementing, all Affirmative Action policies set forth in the Contract, as well as any such policies or regulations which may be issued or amended by the SCA from time to time, and all requirements under applicable Federal, State and City statutes, and any applicable regulations thereunder, relating to equal employment opportunities for all individuals.

Section 19.02 - Employer Responsibilities

The Contractor shall comply with the provisions of all applicable State and City requirements and with all State and Federal laws applicable to the Contractor as an employer of labor or otherwise, as well as any labor provisions set forth in this Contract.

Section 19.03 - Professional Status Responsibilities

The Contractor shall comply, at its own expense, with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, Subcontractors and others employed to perform the Work.

ARTICLE 20 - CERTAIN APPLICABLE LAWS AND REQUIREMENTS

Section 20.01 - General

The Contractor shall comply, and require all Subcontractors to comply, with all applicable provisions of law including, but not limited to, applicable provisions of law under the City Administrative Code, including but not limited to Section 8-107, and requirements regarding locally based enterprises set forth in Section 6-108.1, as applied by the SCA; City Executive Order No. 50 (April 25, 1980), as amended (“E.O. 50”); and the State Executive Law, Finance Law, Insurance Law, Labor Law, Public Authorities Law, Workers’ Compensation Law, and General Municipal Law, including, but not limited to payments to Subcontractors, as set forth in Section 106-b.2.

Section 20.02 - Labor Law Provisions

A. The Contractor agrees, as required by Labor Law Sections 220 and 220-d, as amended that:

1. No laborer, workman or mechanic in the employ of the Contractor or any Subcontractor in the performance of this Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) days in any one (1) week, except in cases of extraordinary emergency, as defined in the Labor Law;

2. The wages paid for a legal day's work to each laborer, workman or mechanic employed by the Contractor or any Subcontractor in the performance of the Contract shall not be less than the prevailing rate of wages as defined by law;
3. Each laborer, workman or mechanic employed by the Contractor or any Subcontractor in the performance of the Contract shall be provided the prevailing supplements as defined by law;
4. The minimum hourly rate of wages to be paid and the minimum supplement to be provided to the laborers, workmen or mechanics employed in the performance of the Contract, either by the Contractor or any Subcontractor, shall not be less than that which shall be designated by the Comptroller of the City; and
5. The Contractor and any Subcontractor shall pay all employees engaged in the performance of the Contract in full, less legally required deductions, in accordance with Labor Law Section 220.3. All such payments shall be made in cash, except payment may be made by check to the extent permitted by law.

B. The Contractor agrees that, as required by Labor Law Section 220-b, in case of underpayment of wages or supplements to any worker engaged in the performance of this Contract by the Contractor or any Subcontractor, the SCA shall withhold from the Contractor out of payments due any amount sufficient to pay such worker the differences between the wages and supplements required to be paid by the Labor Law and wages and supplements actually paid such worker for the total number of hours worked plus interest as provided in the Labor Law, and the SCA may disburse such amount so withheld by the SCA for and on account of the Contractor to the employees to whom such amount is due. The Contractor further agrees that the amount to be withheld pursuant to this Paragraph B may be in addition to any other amounts permitted to be retained by the SCA.

C. If during the performance of the Work a harmful dust hazard is created, for the elimination of which appliances or methods have been approved by the Industrial Board of Appeals of the State, such appliances and methods shall be installed, maintained and effectively operated by the Contractor in compliance with Labor Law Section 222-a. If Labor Law Section 222-a is not complied with, the Contract shall be void, in which event the SCA shall have the same rights and remedies as it would have in the case of termination for cause under this Contract, in addition to any other rights and remedies of the SCA.

D. The Contractor shall pay to the SCA, as liquidated damages, the sum of One Hundred (\$100.00) Dollars for each person employed by the Contractor or any Subcontractor in the performance of the Contract multiplied by the number of every eight (8) hour increment each such person worked in violation of Labor Law Section 220.

In the event of any violation of Labor Law Section 220, the SCA may terminate the Contractor for cause, may issue an unsatisfactory performance evaluation in accordance with Section 20.07, Contractor Performance Evaluation, and may prohibit the Contractor from bidding, contracting or subcontracting on SCA projects for a period not to exceed five (5) years of duration from the date of the decision to terminate the Contractor or the issuance of the unsatisfactory performance evaluation, whichever date is later.

If the Contractor disagrees with any determination or action by the SCA pursuant to this Subsection D, the Contractor's only remedy shall be an appeal pursuant to Article 78.

The provisions of this Subsection D are in addition to all other rights the SCA may have as provided by this Contract and by law and equity.

Section 20.03 - Non-Discrimination Provisions

A. The Contract is subject to the requirements of Section 220-e of the Labor Law, as amended from time to time, and the provisions thereof are incorporated herein by reference. By signing this Contract, the Contractor agrees that:

(a) In the hiring of employees for the performance of Work under this Contract or any Subcontract hereunder, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State who is qualified and available to perform the Work to which the employment relates;

(b) No Contractor, Subcontractor, nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, creed, color, disability, sex or national origin;

(c) There may be deducted from the amount payable to the Contractor by the SCA under this Contract a penalty of fifty (\$50.00) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract;

(d) This Contract may be cancelled or terminated by the SCA, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section of the Contract; and

(e) The aforesaid provisions of this Section covering every contract for or on behalf of the SCA for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State.

B. This Contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§1-14) ("E.O. 50") and the Rules and Regulations promulgated thereunder, as amended from time to time, and the provisions thereof are incorporated herein by reference. No Contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the Contractor agrees that it:

(1) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment.

(2) will not discriminate in the selection of Subcontractors on the basis of the owner's partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status or is an equal employment opportunity employer;

(4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§1-14) and the Rules and Regulations promulgated thereunder;

(5) will furnish before the Contract is awarded all information and reports including an Employment Report, which are required by E.O. 50 (§1-14), the Rules and Regulations promulgated thereunder, and orders of the Director of the Office of Labor Services ("Office"). Copies of all required reports are available upon request from the SCA; and

(6) will permit the Office and the SCA to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such Rules, Regulations, and orders.

The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the Contract and noncompliance with E.O. 50 (§1-14), and the Rules and Regulations promulgated thereunder. After a hearing held pursuant to the rules of the Office, the Director of the Office may direct the imposition by the SCA of any or all of the following sanctions:

- (i) disapproval of the Contractor;
- (ii) suspension or termination of the Contract;
- (iii) declaring the Contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Office may recommend to the SCA President and Chief Executive Officer that a board of responsibility constituted pursuant to the rules and regulations of the Board of Estimate be convened for purposes of declaring a Contractor who has repeatedly failed to comply with E.O. 50 (§1-14) and the Rules and Regulations promulgated thereunder to be non-responsible.

The Contractor agrees to include the provisions of the foregoing paragraphs in every Subcontract or purchase order in excess of Fifty Thousand (\$50,000) Dollars to which it becomes a party, unless exempted by E.O. 50 (§1-14), and the Rules and Regulations promulgated thereunder, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as may be directed by the Director of the Office of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§1-14), and the Rules and Regulations promulgated thereunder with a Subcontractor who is not in compliance with the requirements of E.O. 50 (§1-14), and the Rules and Regulations promulgated thereunder.

Section 20.04 - Investigations – Grand Jury Testimony

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the SCA or by an inspector general or other investigatory authority of a Federal, State or City governmental agency or conducted by a Federal, State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath.

B. (1) If any person who has been advised that his or her statement, and any information from such statement will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority of the State or other public corporation thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State; or,

(2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry by an agency empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the SCA or by an inspector general or other investigatory authority of State or City governmental agency that is a party of interest in, and is seeking testimony concerning the award of or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or other political subdivision or public authority or other public corporation thereof or any local development corporation within the City, or any public benefit corporation organized under the laws of the State, then:

(i) The SCA may convene a hearing, upon not less than five (5) days' Notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

(ii) If any non-governmental party to such a hearing requests an adjournment, the Contractor agrees for itself and for those acting on its behalf that the SCA may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Paragraph D below without the SCA incurring any penalty or damages for delay or otherwise.

C. The Contractor agrees for itself and for those acting on its behalf that the penalties which may be imposed by the SCA after such a hearing and a final determination by the SCA may include but shall not exceed:

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

(2) The cancellation or termination of any and all existing contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted thereunder, nor the proceeds of which pledged, to any affiliated and unrelated institutional lender for fair value prior to the issuance of the Notice scheduling the hearing, without the SCA's incurring any penalty or damages on account of such cancellation or termination. Monies lawfully due for goods delivered, Work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the SCA.

D. The SCA shall consider and address in reaching its determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. The SCA may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

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

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

(3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses.

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph C above, provided that the party or entity has given actual notice to the SCA upon the acquisition of the interest, or at the hearing called for in Paragraph B.(2)(i) above gives notice and proves that such interest was previously acquired. Under either circumstance that party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

E. (1) The term "license" or "permit" as used in this Section 20.04 shall be defined as a license, permit franchise or concession not granted as a matter of right.

(2) The term "person" as used in this Section 20.04 shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(3) The term “entity” as used in this Section 20.04 shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits licenses, leases, or permits from or through the SCA or otherwise transacts business with the SCA.

(4) The term “member” as used in this Section 20.04 shall be defined as any person associated with another person or entity as a partner, director, officer, owner, other principal or employee.

F. The SCA in its sole discretion may terminate this Contract upon not less than three (3) days’ Notice in the event the Contractor fails to promptly report in writing to the Inspector General of the SCA any solicitation for money, goods request for future employment or other benefit or thing of value, by or on behalf of any employee of the SCA or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

Section 20.05 - Notice to the Inspector General

A. The Contractor shall notify the Office of the Inspector General (“OIG”) in writing within thirty (30) days after the Contractor or any director, partner, officer, or “Key Person” of the Contractor, as defined in the most recent prequalification application filed by the Contractor with the SCA (whether or not named in the application), or any shareholder owning 5% or more of the Contractor’s stock, or any consultant to the Contractor:

1. comes under, is, or has been under investigation involving any violation of criminal law or other federal, state, or local law or regulation, by any governmental agency. An investigation includes:
 - (a) receipt of a federal or state grand jury or criminal trial subpoena, whether for testimony or production of documents;
 - (b) receipt of a subpoena, whether for testimony or production of documents, from a federal, state or city regulatory agency of any kind;
 - (c) having any of the offices or trailers or the residence or office of a Key Person searched pursuant to a warrant issued by any state or federal court; and
 - (d) receipt of notice that the communications of a Key Person were intercepted pursuant to a federal or state eavesdropping warrant.
2. is arrested, indicted or named as an unindicted co-conspirator in any indictment or other criminal accusatory instrument; or
3. is convicted of any felony or misdemeanor under state or federal law.

B. The Contractor shall notify the OIG in writing immediately after any of the following events:

1. If a public servant or labor official solicits money or any other benefit from the Contractor, including from any director, partner, officer, employee of the Contractor, or any shareholder owning five (5%) percent or more of the Contractor's stock, as a gratuity or to influence that public servant or labor official with respect to any of his or her acts, duties, or decisions as a public servant or labor officer; or
2. If any of the Contractor's directors, partners, officers, or employees or any shareholder owning five (5%) percent or more of the Contractor's stock, offers or agrees to give or gives money or any benefit to anyone as a result of perceived or actual coercion or extortion.

C. The Contractor will incorporate the language of this Section in all Subcontracts so as to require similar notice to the OIG by any of its Subcontractors. The Contractor is also required to give written notice to the OIG within, thirty (30) days, after learning that an event described in Paragraph A of this Section has occurred concerning a Subcontractor, and immediately after an event described in Paragraph B has occurred.

D. The failure of the Contractor to give the notices to the OIG as required by this Section shall constitute a separate and material breach of this Contract, in addition to any other remedy that the SCA may have or acquire.

Section 20.06 - Whistle Blower Protection

The Contractor shall not take any retaliatory action against any employee who reports fraud, waste, abuse or criminal conduct to the OIG or to any law enforcement or other public agency.

ARTICLE 21 - CONTRACTOR PERFORMANCE EVALUATION

Section 21.01 - Contractor Performance Evaluation - Construction Management (*Not Applicable to Mentor Projects*)

I. Evaluation System

- A. The SCA may evaluate the performance of all contractors, subcontractors and vendors (collectively referred to in this Article 21 as "contractor") for compliance with construction related Contract requirements. A contractor may be evaluated and/or re-evaluated at any time during performance of the Contract. If evaluated, the contractor will be rated in the following categories: Quality of Work; Scheduling; Management; Economic and Employment Opportunities; Safety; and Industrial and Environmental Hygiene. An evaluation in any one of these categories may be used to determine the overall contractor performance rating.

B. Definitions:

1. Satisfactory - Performance meets expected standards.
2. Unsatisfactory - Performance is below expected standards.

II. Evaluations – Construction Management

A. Pre-Substantial Completion Unsatisfactory Evaluation

If a contractor receives a unsatisfactory performance evaluation (“Unsatisfactory Evaluation”) at any time prior to Substantial Completion, it shall be suspended from bidding, contracting, or subcontracting on future SCA projects until the achievement of Substantial Completion. However, within the twenty-five (25) calendar day period following the date of the Unsatisfactory Evaluation, the contractor may make a written request to the Vice President of Construction Management (the “VP CM”), to be re-evaluated. A contractor’s written request shall include supporting documentation and state the specific grounds and facts that warrant re-evaluation. If the request is made within such twenty-five (25) calendar day period, and the subsequent re-evaluation is satisfactory, the suspension will end as of the effective date of the re-evaluation. If the contractor does not make a request for re-evaluation as provided in this Paragraph, or if the re-evaluation is unsatisfactory, the suspension shall continue until the achievement of Substantial Completion. In addition, if the contractor fails to request a re-evaluation or if the re-evaluation is unsatisfactory and the contractor does not appeal or seek reconsideration pursuant to Section III below and, in the opinion of the VP CM, the contractor cannot safely and/or timely complete the Work in the manner and/or in accordance with the Schedule, such may be the grounds for Termination for Cause pursuant to Article 10.

B. Substantial Completion Unsatisfactory Evaluation

If a contractor receives an Unsatisfactory Evaluation at or after Substantial Completion, but before Final Completion, it shall be suspended from bidding, contracting, or subcontracting on future SCA projects until the achievement of Final Completion, or for a specified period of time. However, within the twenty-five (25) calendar day period following the date of the Unsatisfactory Evaluation, the contractor may make a written request to the VP-CM to be re-evaluated. A contractor’s written request shall include supporting documentation and state the specific grounds and facts that warrant re-evaluation. If the request is made within such twenty-five (25) calendar day period, and the re-evaluation is satisfactory, the suspension will end as of the effective of the re-evaluation. If the contractor does not make a request for re-evaluation as provided in this Paragraph, or if the re-evaluation is unsatisfactory, the suspension shall continue until the achievement of Final Completion or for the specified period of time. In addition, if the contractor fails to request a re-evaluation or if the re-evaluation is unsatisfactory and the contractor does not appeal or seek reconsideration pursuant to Section III below and, in the opinion of the VP CM, the contractor cannot safely and/or timely complete the Work in the manner and/or in accordance with the Schedule, such may be the grounds for Termination for Cause pursuant to Article 10.

C. Final Completion Unsatisfactory Evaluation

If a contractor receives an Unsatisfactory Evaluation at or after Final Completion, it shall be suspended from bidding, contracting, or subcontracting on future SCA projects for a specified period of time, not to exceed five (5) years. However, within the twenty-five (25) calendar day period following the date of the Unsatisfactory Evaluation, the contractor may make a written request to the VP CM, to be re-evaluated. A contractor's written request shall include supporting documentation and shall state the specific grounds and facts that warrant re-evaluation. If the request is made within such twenty-five (25) calendar day period, and the re-evaluation is satisfactory, the suspension will end as of the effective of the re-evaluation. If the contractor does not make a request for re-evaluation as provided in this Paragraph, or if the re-evaluation is unsatisfactory, the suspension shall continue for the specified period of time. In addition, if the contractor fails to request a re-evaluation or if the re-evaluation is unsatisfactory and the contractor does not appeal or seek reconsideration pursuant to Section III below and, in the opinion of the VP CM, the contractor cannot safely and/or timely complete the Work in the manner and/or in accordance with the Schedule, such may be the grounds for Termination for Cause pursuant to Article 10.

D. In addition to the foregoing, the SCA may impose other conditions upon a contractor who is rated unsatisfactory in any evaluation.

E. If the SCA issues a satisfactory evaluation in regard to the contractor's performance on the Contract, it will supersede any existing unsatisfactory evaluation of the contractor on the Contract and the suspension, if any, will end as of the date of such satisfactory evaluation.

III. Evaluation Appeal Panel

A. If a contractor first makes a request to the VP CM to be re-evaluated as provided in this Section 20.07, and the re-evaluation is unsatisfactory, the contractor may appeal the unsatisfactory re-evaluation (the "Unsatisfactory Re-Evaluation") by making a written request to the Office of the General Counsel within twenty-five (25) calendar days from the date of the Unsatisfactory Evaluation. A contractor's written appeal shall include supporting documentation and shall state the specific grounds and facts that warrant reconsideration. The appeal shall be heard by an Evaluation Panel comprised of representatives from Construction Management, Architecture and Engineering, and the Office of the General Counsel.

B. In the event that the Re-Evaluation Panel rescinds the Unsatisfactory Evaluation, the suspension will end as of the date of such decision.

- C. If a contractor disagrees with any determination, or any part thereof, made in connection with a contractor performance evaluation, the contractor's sole remedy (other than the re-evaluation, appeal and reconsideration provisions set forth in this Section 20.07) shall be a proceeding under Article 78 of the New York Civil Practice Law and Rules. Other than such Article 78 proceeding, a contractor shall have no cause of action or claim whatsoever against the SCA as a consequence of an Unsatisfactory Evaluation, or suspension from bidding, contracting, or subcontracting on SCA projects, or a Termination for Cause including, without limitation, the loss of any contract award, potential contract award, or opportunity to bid on projects for the SCA or any other entity.

Section 21.02 - MWLBE Contractor Compliance Evaluation - Business Development Department
(Not Applicable to Mentor Projects)

I. Evaluation System

The SCA may evaluate all contractors for compliance with MWBE related Contract requirements. A contractor may be evaluated and/or re-evaluated at any time during performance of the Contract. If evaluated, the contractor will be rated in the following categories: Success in meeting MWBE goals; Responsiveness to BDD inquiries and Level of Good Faith Efforts to meet goals. Evaluations in these categories will be used to determine the overall contractor compliance rating.

II. Evaluations – BDD

A. Unsatisfactory BDD Evaluation

If a contractor receives an Unsatisfactory BDD Evaluation at any time, it may be suspended from bidding, contracting, or subcontracting on certain SCA projects, placed on a list of firms required an additional level of review (the “BDD Review List”) prior to approval for inclusion on SCA Limited Lists until BDD lifts the Unsatisfactory BDD Evaluation. However, the contractor may make a written request within thirty (30) days of the Unsatisfactory BDD Evaluation to the Chief Diversity Officer, to be re-evaluated. During that 30-day period no penalty shall apply. A contractor's written request shall include supporting documentation and state the grounds and facts that warrant re-evaluation. If the request is made within such thirty (30) calendar day period, and the re-evaluation is satisfactory, the suspension will end as of the effective of the re-evaluation. If the contractor does not make a request for re-evaluation as provided in this Paragraph, or if the re-evaluation is unsatisfactory, the placement on the BDD Review List shall continue for a period of six months.

- B. In addition to the foregoing, the SCA may impose other conditions upon a contractor who receives an Unsatisfactory BDD Evaluation.

- C. If BDD issues a Satisfactory BDD Evaluation in regard to the contractor's MWLBE compliance performance on the Contract at any point in time, it will supersede any existing unsatisfactory evaluation of the contractor on the Contract and the suspension, if any, will end as of the date of such satisfactory evaluation.

III. Evaluation Panel

- A. If a contractor first makes a request to the Chief Diversity Officer to be re-evaluated, and the re-evaluation is unsatisfactory, the contractor may appeal the unsatisfactory re-evaluation by making a written request to the Office of the Vice President, Legal & General Counsel within twenty-five (25) calendar days of the contractor's receipt of the unsatisfactory re-evaluation. A contractor's written appeal shall include supporting documentation and shall state the grounds and facts that warrant reconsideration. The appeal shall be heard by an Evaluation Panel comprised of any combination of representatives from the BDD, Construction Management, Architecture and Engineering, and/or the Legal Departments.
- B. A contractor may request reconsideration of an adverse decision of the Evaluation Panel by writing to the President & Chief Executive Officer within twenty-five (25) calendar days of the contractor's receipt of the decision of the Evaluation Panel. A contractor's written request for reconsideration shall include supporting documentation and shall state the grounds and facts that warrant reconsideration.
- C. In the event either the Evaluation Panel or the President and Chief Executive Officer rescind the Unsatisfactory BDD Evaluation, the suspension will end as of the date of such decision.
- D. If a contractor disagrees with any determination, or any part thereof, made in connection with a contractor performance evaluation, the contractor's sole remedy (other than the re-evaluation, appeal and reconsideration provisions set forth herein) shall be a proceeding under Article 78 of the New York Civil Practice Law and Rules. Other than such Article 78 proceeding, a contractor shall have no cause of action or claim whatsoever against the SCA as a consequence of an unsatisfactory evaluation or suspension from bidding, contracting, or subcontracting on SCA projects, including, without limitation, the loss of any contract award, potential contract award, or opportunity to bid on projects for the SCA or any other entity.

APPENDIX A

CHANGE ORDER

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EXHIBIT FOLLOWS



NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY
CONTRACT CHANGE ORDER

PROJECT _____ CHANGE ORDER _____
CONTRACTOR _____ CONTRACT NO. _____
STREET _____ PCO NO. _____
CITY, STATE, ZIP _____ LLW NO. _____

DESCRIPTION OF WORK:

Multiple horizontal lines for describing the work.

TOTALS: COST: Add/Deduct _____ Add/Deduct _____ Cal. Days _____

The Contractor agrees to perform or omit work, as described in this change order, for the amount and within the contract scheduled completion time period as adjusted above. In accepting and executing this Change Order the Contractor, its heirs, executors, administrators, successors and assigns hereby release and forever discharge the New York City School Construction Authority, its successors and assigns from any and all actions, causes of action, claims and demands whatsoever in law or in equity which the Contractor ever had, now has or may have against the New York City School Construction Authority in any way arising out of the change described above.

Contractor's Signature _____ DATE _____

SCA's Signature _____ DATE _____

Print Name _____

SCA OFFICE USE ONLY [] _____ [] _____ [] _____

APPENDIX B

THE SCA'S DISPUTE RESOLUTION PROCEDURE

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EXHIBIT FOLLOWS



PART 9603

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY PROCEDURE FOR DISPUTE RESOLUTION

STATEMENT OF PURPOSE

9603.1 Purpose

These procedures for the resolution of contract disputes are proposed for adoption pursuant to section 1734 (9) of the New York State Public Authorization Law.

9603.2 Mediation

(a) Claimant who files a Notice of Claim in conformance with the provisions of section 1744 of the New York State Public Authorities Law may elect to submit the matter to non-binding mediation (“Mediation”) by submitting a written notice of dispute (“Notice of Dispute”) to the Authority’s Corporate Secretary with a copy to the Vice President of Operations and the Vice President and General Counsel within fifteen (15) working days of the filing of the Notice Claim to the Notice of Disputes.

(b) The mediation shall be conducted by a qualified mediator with expertise in the area of dispute. The mediator shall be selected from a list maintained by the Authority but both the claimant and the Authority must approve the mediator.

(c) Claimant and the Authority may agree that a single mediation shall combine disputes involving more than one claim.

Confidentiality

- (a) Mediation sessions shall be private.
- (b) All records, reports or other documents considered by the mediator shall be confidential.
- (c) The claimant and the Authority shall agree that the mediator shall not be compelled to divulge confidential materials or to testify in regard to the mediation in any adversary proceedings or judicial form.
- (d) The claimant and the Authority shall agree to maintain the confidentiality of the Mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding; any of the following:
 - (1) views expressed or suggestions made by the other party with respect to a possible settlement of the dispute;
 - (2) admission made by the other party in the course of the Mediation proceedings;
 - (3) proposals made or views expressed by the mediator; or
 - (4) the fact that the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- (e) There shall be no stenographic record of the Mediation process:

9603.1 Cost

The claimant and the Authority shall share equally all costs of the Mediation including the Mediators fee.

Resolution

(a) If the Mediation does not result in the execution of a settlement agreement between the claimant and the Authority, the mediator shall prepare a written advisory opinion.

(b) A copy of the advisory opinion shall be delivered to the claimant and to the Authority's Corporate Secretary, Vice President for Operations and Vice President and General Counsel.

(c) The Advisory opinion shall be a confidential document subject to the provisions of paragraphs b, c and d of section 9603.3.

August 1, 2012

APPENDIX C

REQUEST FOR PAYMENT

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EXHIBIT FOLLOWS



New York City
 School Construction Authority
 30-30 Thomson Avenue
 Long Island City, NY 11101

Application Number: _____ **LLW:** _____

Oracle Active

Initial Contract Amount: _____ **Period From:** _____ **To:** _____ CIP LINE

Project Title:	CONTRACTOR/CONSULTANT
Location:	
Contract Number:	
Award Date:	

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	.%	TOTAL VALUE OF COMPLETED WORK	VALUE OF WORK COMPLETED	
					FROM PREVIOUS APPLICATION	THIS PERIOD
1		2	3	4	5	6
LLW						
0000010	Submittals		0.00%	\$0.00	\$0.00	\$0.00
0000020	Close Out		0.00%	\$0.00	\$0.00	\$0.00
0000030	Bonds		0.00%	\$0.00	\$0.00	\$0.00
0000040	Guarantees		0.00%	\$0.00	\$0.00	\$0.00
0000050	Warranties		0.00%	\$0.00	\$0.00	\$0.00
0000060	Asbestos Abatement		0.00%	\$0.00	\$0.00	\$0.00
SUB-TOTAL LLW				\$0.00	\$0.00	\$0.00
LLW						
0000070	Submittals		0.00%	\$0.00	\$0.00	\$0.00
0000080	Close Out		0.00%	\$0.00	\$0.00	\$0.00
0000090	Asbestos Abatement		0.00%	\$0.00	\$0.00	\$0.00
SUB-TOTAL LLW				\$0.00	\$0.00	\$0.00
LLW						
0000100	Asbestos Abatement		0.00%	\$0.00	\$0.00	\$0.00
SUB-TOTAL LLW				\$0.00	\$0.00	\$0.00
LLW						
0000110	Submittals		0.00%	\$0.00	\$0.00	\$0.00
0000120	Close Out		0.00%	\$0.00	\$0.00	\$0.00
0000130	Bonds		0.00%	\$0.00	\$0.00	\$0.00
0000140	Guarantees		0.00%	\$0.00	\$0.00	\$0.00
0000150	Warranties		0.00%	\$0.00	\$0.00	\$0.00



New York City
 School Construction Authority
 30-30 Thomson Avenue
 Long Island City, NY 11101

Application Number: _____ **LLW:** _____

Oracle Active

Initial Contract Amount: _____ **Period From:** _____ **To:** _____ CIP LINE

Project Title:	CONTRACTOR/CONSULTANT
Location:	
Contract Number:	
Award Date:	

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	.%	TOTAL VALUE OF COMPLETED WORK	VALUE OF WORK COMPLETED	
					FROM PREVIOUS APPLICATION	THIS PERIOD
1	2	3	4	5	6	
LLW						
	Asbestos Abatement		0.00%	\$0.00	\$0.00	\$0.00
SUB-TOTAL LLW				\$0.00	\$0.00	\$0.00
Sub-Total Contract Work			0.00%	\$0.00	\$0.00	\$0.00
Total Change Orders		\$0.00		\$0.00	\$0.00	\$0.00
b-Total Contract Work With CO's				\$0.00	\$0.00	\$0.00
Retainage (0.00%)					\$0.00	\$0.00
Totals				\$0.00	\$0.00	\$0.00
Certified Totals						\$0.00
Difference						\$0.00

Certificate for Payment has been completed in accordance with the Contract Documents and here applicable in compliance with Labor Law 220, and that the current payment shown herein is no due. The undersigned further certifies that all subcontractors have been and shall be paid in full within the time specified in Article 16 of the General Conditions.

CM/Contractor/Consultant _____ BY: _____ Date: _____
 Subscribed and sworn to me
 this _____ day of _____ 20 _____
 Notary Public:
 Commission Expires: _____

SIGNATURE OF FIELD REPRESENTATIVE:	PRINT NAME:	DATE:
SIGNATURE OF PROJECT OFFICER:	PRINT NAME:	DATE:
SIGNATURE OF SENIOR PROJECT OFFICER:	PRINT NAME:	DATE:

Fiscal Services Summary Sheet



New York City
 School Construction Authority
 30-30 Thomson Avenue
 Long Island City, NY 11101

Request for Payment No.:		LLW:	
Initial Contract Amount:	Period From:	To:	Contractor <input type="checkbox"/> CIP <input type="checkbox"/> LINE <input type="checkbox"/>
Expedition Project:	CONTRACTOR/CONSULTANT		
Project Title:			
Location:			
Contract Number:			
Award Date:			

Contract Work LLW Breakdown Including Change Orders

LLW	This Period	This Period Retainage	This Period Amount with Retainage
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Total All LLWs:	\$0.00	\$0.00	\$0.00

SUMMARY			
Total This Period		\$0.00	
Retainage			
Release:	\$0.00		
This Period:	\$0.00	\$0.00	
Certified Amount:		\$0.00	

APPENDIX D

NOTICE OF DIRECTION (MARKED AS EXHIBITS 4A, 4B and 4C)

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EXHIBITS FOLLOW



NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY
NOTICE OF DIRECTION

TO: _____ DATE: _____
CONTRACT NO.: _____
PCO No.: _____

ATTN: _____

PROJECT: _____

Your proposal dated _____ in the amount _____
has been received and is under review. Pending negotiation, you are hereby directed to proceed with
the following work.

(DESCRIPTION OF WORK)

Multiple horizontal lines for describing the work.

Very truly yours,

Project Officer

Concur:

Chief Project Officer

cc: Chief Project Officer

**NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY
NOTICE OF DIRECTION**

TO: _____ **DATE:** _____
_____ **CONTRACT NO.:** _____
_____ **PCO No.:** _____

ATTN: _____

PROJECT: _____

You are hereby directed to proceed with the following work.

(DESCRIPTION OF WORK)

Please submit within two weeks a detailed proposal for the work indicated above.

Very truly yours,

Project Officer

Concur:

Chief Project Officer

cc: Chief Project Officer



NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY
NOTICE OF DIRECTION

TO: _____ DATE: _____
CONTRACT NO.: _____
PCO No.: _____
ATTN: _____
PROJECT: _____

You are hereby directed to proceed with the following work on a time & material basis not to exceed the amount of _____ . You are also directed to advise the writer when eighty percent (80%) of this amount has been incurred.

(DESCRIPTION OF WORK)

Time and material tickets must be submitted daily.

Very truly yours,

Project Officer

Concur:

Chief Project Officer

cc: Chief Project Officer

APPENDIX E

**TERMS AND CONDITIONS
FOR
HAZARDOUS MATERIALS
SUBCONTRACTOR**

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EXHIBIT FOLLOWS

TERMS AND CONDITIONS

FOR

HAZARDOUS MATERIALS

SUBCONTRACTOR

TERMS AND CONDITIONS FOR HAZARDOUS MATERIALS SUBCONTRACTOR

These Terms and Conditions for the Hazardous Materials Subcontractor shall be incorporated in the Subcontract between the Contractor or Construction Manager, and the Hazardous Materials Subcontractor. These additional Terms and Conditions shall apply to all Work for the remediation of Hazardous Materials.

Definitions:

Contract -

The agreement between the SCA and the Contractor or Construction Manager consisting of all Contract Documents.

Contract Documents -

All of the following, if any, created for or applicable to the Work: Prequalification form, Prequalification form addenda, Contract Agreement, Notice to Bidders, Information for Bidders, Form of Bid, General Conditions, Supplemental General Conditions, General Requirements, Supplemental General Requirements, Detailed Breakdown, Bonds, Plans, Drawings, Specifications, Addenda, Change Orders, Work Authorizations, Safety Manual, and any supplementary documents together with all provisions of law deemed to be inserted in any of these documents.

Current Industry Standards -

As used herein, the term Current Industry Standards, shall mean those practices currently employed in the industry which meet or exceed Current Legal Requirements.

Current Legal Requirements -

Current Legal Requirements shall mean (i) any and all applicable laws, codes, regulations, ordinances, rules, guidelines, guidance documents, judgments, orders, decrees and other legal requirements (collectively, "laws") promulgated by agencies having or claiming to have jurisdiction over and/or pertaining to reporting, licensing, permitting, investigation and remediation of omissions, discharges, Releases (as defined herein) or Threats of Release (as defined herein) of Hazardous Materials, and other materials as are now or may hereinafter be regulated by applicable Current Legal Requirements into the air, surface water, groundwater or land, or relating to the manufacturer, processing, distribution, use, treatment, storage, disposal, transport or handling of Regulated Materials, and any licenses, authorizations, clearances, permits, certifications, inspections and lien authorizations (collectively, "Licenses") required by any governmental authority in connection with H-M

Subcontractor's performance of the Work. H-M Subcontractor acknowledges that it and its employees are familiar with all Current Legal Requirements and agrees to perform the Work in strict compliance with the same as the same may have been or may be promulgated, supplemented, amended or modified from time to time prior to, during, and as applicable after the completion of the Work. If Current Legal Requirements change during the prosecution of the Work, compliance with Current Legal Requirements shall mean compliance with such changes whether or not the same require a different or higher standard than required by Current Legal Requirements in effect at the commencement of the Work.

Department -

The Department of Education of the City of New York.

Environment -

"Environment" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

Hazardous Materials -

"Hazardous Materials" shall mean (i) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, petroleum and petroleum products, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials," "hazardous wastes" or words of similar import under any Legal Requirement including the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. S9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. S1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. S6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. S1251 et seq.; the New York Environmental Conservation Law; New York City Administrative Code SS24-601 et seq.; and (iv) any other chemical, material, gas or substance, the storage, exposure to or release of which is or may hereafter be prohibited, limited or regulated by any governmental or quasi-governmental entity having jurisdiction over the Premises or the operations or activity at the Premises, or any chemical, material, gas or substance that does or may pose a hazard to the health or safety of the occupants of the Premises or the occupants of property adjacent to the Premises.

H-M Subcontractor –

H-M Subcontractor shall refer to the Hazardous Material Subcontractor.

Permit -

"Permit" shall mean any permit, license, approval, consent or authorization issued by a federal, state or local governmental or quasi-governmental entity in accordance with any Environmental Law or Current Legal Requirement.

Release -

"Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

Remedial Action -

"Remedial Action" shall mean all actions as are necessary to put the Premises in the condition required by law.

SCA -

The New York City School Construction Authority, it's servants, employees, agents or designees as the case may be.

Site -

The location where the Work is to be performed as indicated in the Contract Documents.

Threat of Release -

"Threat of Release" shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

Work -

The carrying out of all obligations imposed upon the H-M Subcontractor pursuant to its Subcontract and the Terms and Conditions set forth herein.

Notices:

H-M Subcontractor shall give all necessary notices and pay all fees and costs associated with such notices. Specifically, H-M Subcontractor shall file a notification letter to the Department of Environmental Conservation, and shall make all filings required by Current Legal Requirements.

H-M Subcontractor's Employees:

H-M Subcontractor represents that it is experienced in remediation of hazardous materials and the removal of underground storage tanks and that H-M Subcontractor's employees and subcontractors have sufficient technical qualifications, licenses, experience in training with Current Legal Requirements for remediation of hazardous material and the removal of such tanks as well as the proper disposal of the tanks, the contents of such tanks and contaminated material surrounding such tanks.

Intended Beneficiary:

The parties hereto agree that the SCA is an intended beneficiary of the Subcontract between the Contractor or the Construction and the Hazardous Materials Subcontractor.

Duties of H-M Subcontractor upon Termination:

In the event the Subcontract of the H-M Subcontractor is terminated, the H-M Subcontractor agrees that it shall leave the Site in such condition as it will not cause danger or risk of harm to any person lawfully frequenting the environs, or be subject to legal action for violations of Current Legal Requirements. H-M Subcontractor represents that it shall leave the Site so that there will be no risk of harm to the employees of other contractors, subcontractors or the SCA at the Site.

Accident Prevention:

The H-M Subcontractor shall, at all times, take every precaution against injuries to persons or damage to property and for the safety of persons engaged in the performance of the Work. The H-M Subcontractor shall establish and maintain at all times safety procedures in connection with the Work as required by Current Legal Requirements.

Safety Programs:

The H-M Subcontractor shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work.

Protection of Work and Property:

The H-M Subcontractor shall, at all times, guard the Site from injury or loss in connection with the Work. The H-M Subcontractor shall, at all times, guard and protect the H-M Subcontractor's Work, and adjacent property. The H-M Subcontractor shall replace or make good any loss or injury unless caused directly by the SCA.

The H-M Subcontractor shall have full responsibility to install, protect, and maintain all materials and supplies in proper condition and forthwith repair, replace and make good any damage thereto until Final Completion. The H-M Subcontractor shall maintain an inventory of all materials and supplies for the Work at the Site that are delivered to the Site or approved for off-Site storage facilities.

Adjoining Property:

The H-M Subcontractor shall protect all adjoining property and shall repair or replace any property damaged or destroyed during the progress of the Work.

Risks Assumed by the H-M Subcontractor:

The H-M Subcontractor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the H-M Subcontractor or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the execution of the Work; and if any person shall make such a claim for any damage or injury, including death resulting therefrom, the H-M Subcontractor shall indemnify and hold harmless the Contractor, the Construction Manager, the SCA, the Department, the City of New York, and their agents representatives, employees, principals, partners, officers and directors (collectively the "Indemnitee"), from any and all loss, expense, damage or injury that they may sustain as the result of any claim and the H-M Subcontractor shall assume, on behalf of the SCA, the defense of any action at law or equity which may be brought against the Indemnitee, upon any claim and pay on behalf of the Indemnitee, upon demand, the amount of any judgment that may be entered against the Indemnitee. Notwithstanding the foregoing, the H-M Subcontractor shall not be liable for damages arising out of the presence of harmful materials on the Site prior to the commencement of the Work except to the extent that such damages were caused or increased by H-M Subcontractor's actions, negligent failure to act, or non-compliance with Current Legal Requirements.

Claims Arising Out of or in Connection with the Work:

To the fullest extent permitted by law, H-M Subcontractor agrees to indemnify and hold harmless the Contractor, the Construction Manager, the Department, the City of New York, and the SCA its agents, representatives, employees, principals, partners, officers and directors (collectively, the "Indemnatee"), against any and all losses, claims, damages of every name and description, expenses, fines and penalties (including, but not limited to, consequential damages, economic loss, personal injury, emotional distress, distress claims, property damage, curing or defending against governmental violations and attorneys' fees and disbursements) resulting from any improper or defective materials, machinery, implement or appliance used, or from H-M Subcontractor's or its subcontractor's omissions, performance, negligence, carelessness or failure to perform under the Subcontract, or in guarding the Work and to defend at the request of any Indemnatee, with counsel reasonably satisfactory to the SCA, at H-M Subcontractor's sole expense, any suit, action or proceeding (including, but not limited to, any defense in connection with a governmental violation) brought against such Indemnatee.

If the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the Work of H-M Subcontractor, or its subcontractors, in their performance of this Subcontract, or from its or their failure to comply with the requirements of the H-M Subcontract, Current Legal Requirements or Current Industry Standards, H-M Subcontractor shall indemnify and hold the Indemnitees harmless from any and all claims and judgments for damages and from costs and expenses to which the SCA may be subject or which it may suffer or incur by reason thereof. The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against H-M Subcontractor, the Contractor, the Construction Manger, the SCA, the Department or the City of New York.

Warranty:

The H-M Subcontractor warrants that it is aware of and understands the hazards which are presented to persons, property, and the environment in the performing of investigative, monitoring, sampling, transportation, storage, remediation and disposal services as described within the scope of services of its Subcontract. It will transport, store, remediate and dispose of such materials in full compliance with all applicable governmental laws, regulations and orders. If the scope of services requires off-site storage or disposal, the selected storage and disposal facilities described in the Work plan are now appropriately licensed and permitted to store and dispose of the waste, materials or hazardous substance detailed within the Work plan. In the event the storage or disposal facility loses its permitted status hereafter during the terms of the H-M Subcontract, the H-M Subcontractor shall promptly notify Contractor or Construction Manager and the SCA of such loss.

Protection of Lives and Health:

H-M Subcontractor shall comply fully with all applicable provisions of the laws of the State of New York, the United States of America and with all applicable rules and regulations of New York and the United States of America and all other applicable governmental authorities. H-M Subcontractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Environmental Conservation and the standards imposed under the Federal Standards for Hazardous Waste promulgated by the Environmental Protection Agency, all regulations and provisions enacted by the Department of Health and Human Services, the Department of Environmental Protection, the United States Department of Transportation, and the New York State Department of Environmental Conservation, as each has been or may be amended.

Any failure to take all steps and cause all conditions to protect the health, safety and welfare of all persons affected by the Work which are (a) required by law, Current Legal Requirements or are Current Industry Standards; (b) required by the Contract Documents; or (c) directed to be made by the Contractor, the Construction Manager, the SCA, or a governmental agency having or asserting jurisdiction over the Work, may result in the issuance of a Stop Work Order by the Contractor, the Construction Manager, or the SCA without prior warning of any kind. In the event the SCA orders H-M Subcontractor to stop the Work or any portion thereof, any and all costs incurred by the SCA due to such Work stoppage shall be borne by H-M Subcontractor.

In the event the Work is stopped for any reason, including but not limited to requests by the Contractor, the Construction Manager, the SCA or any governmental body having or asserting jurisdiction over the Work, or the termination of the Subcontract by any party, H-M Subcontractor must nevertheless immediately take any and all actions necessary (i) to ensure the health, safety and welfare of all students, employees, guests or other occupants of the Site and its environs; and (ii) to comply with Current Legal Requirements and Current Industry Standards.

The H-M Subcontractor shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment of Work under the Subcontract, and shall immediately send a Notice to the Contractor or Construction Manager, and the SCA of any injury which results in hospitalization or death.

The H-M Subcontractor alone shall be responsible for the safety, efficiency and adequacy of the H-M Subcontractor's Work, plant, appliances and methods, and for any damage which may result from the failure or the improper construction, maintenance, or operation of such Work, plant, appliances and methods.

Professional Status Requirements:

The H-M Subcontractor shall comply, at its own expense, with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to undertake and complete the Work hereunder.

APPENDIX F

TERMS AND CONDITIONS
FOR
ASBESTOS SUBCONTRACTOR

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EXHIBIT FOLLOWS

TERMS AND CONDITIONS

FOR

ASBESTOS

SUBCONTRACTOR

TERMS AND CONDITIONS FOR ASBESTOS SUBCONTRACTOR

Terms and Conditions for the Asbestos Subcontractor shall be incorporated in the Subcontract between the Contractor or Construction Manager and the Asbestos Subcontractor. These Terms and Conditions shall apply to all Work for Asbestos as defined in Current Legal Requirements herein below.

Definition:

Asbestos -

Asbestos shall mean those minerals included in that term as defined by Current Legal Requirements.

Asbestos Subcontractor –

Asbestos Subcontractor shall refer to the Asbestos Subcontractor.

Contract -

The agreement between the SCA and the Contractor or Construction Manager consisting of all Contract Documents.

Contract Documents -

All of the following, if any, created for or applicable to the Work: Prequalification form, Prequalification form addenda, Contract Agreement, Notice to Bidders, Information for Bidders, Form of Bid, General Conditions, Supplemental General Conditions, General Requirements, Supplemental General Requirements, Detailed Breakdown, Bonds, Plans, Drawings, Specifications, Addenda, Change Orders, Work Authorizations, Safety Manual, and any supplementary documents together with all provisions of law deemed to be inserted in any of these documents.

Current Industry Standards

As used herein, the term Current Industry Standards, shall mean those practices currently employed in the industry which meet or exceed Current Legal Requirements.

Current Legal Requirements

Current Legal Requirements shall mean (i) any and all applicable laws, codes, regulations, ordinances, rules, guidelines, guidance documents, judgments, orders, decrees and other legal requirements (collectively, "laws") promulgated by agencies having or claiming to have jurisdiction over and/or pertaining to the inspection of asbestos, asbestos control, the abatement of asbestos containing material, the transport, storage and disposal of waste which contains asbestos, and the reinsulation of areas from which asbestos has been removed, including, without limitation, all quantitative standards which must be achieved or observed in connection with the performance of the Work; (ii) and any licenses, authorizations, clearances, permits, certifications, inspections and lien authorizations (collectively, "Licenses") required by any governmental authority in connection with Asbestos Subcontractor's performance of the Work. Asbestos Subcontractor acknowledges that it and its employees are familiar with all Current Legal Requirements and agrees to perform the Work in strict compliance with the same as the same may have been or may be promulgated, supplemented, amended or modified from time to time prior to, during, and as applicable after the completion of the Work. If Current Legal Requirements change during the prosecution of the Work, compliance with Current Legal Requirements shall mean compliance with such changes whether or not the same require a different or higher standard than required by Current Legal Requirements in effect at the commencement of the Work.

Department -

The Department of Education of the City of New York.

SCA -

The New York City School Construction Authority, it's servants, employees, agents or designees as the case may be.

Site -

The location where the Work is to be performed as indicated in the Contract Documents.

Work -

The carrying out of all obligations imposed upon the Asbestos Subcontractor pursuant to its Subcontract and the Terms and Conditions set forth herein.

Notices:

Asbestos Subcontractor shall give all necessary notices and pay all fees and costs associated with such notices.

Intended Beneficiary:

The Parties hereto agree that the SCA is an intended beneficiary of the Subcontract between the Contractor and the Asbestos Subcontractor.

Consultant's Directions and Determinations:

The SCA's Asbestos Consultant shall have unrestricted access to the Site at all times for the purposes of providing continuous resident observations, inspections, approvals, and air monitoring indicated in the Contract Documents. These functions shall be provided throughout any preparation, demolition, removal, abatement, clean-up, waste packaging, removal operations and reinsulation. Asbestos Subcontractor shall not commence any portion of the Work for any Work area until obtaining the prior approval of the Consultant.

Patent, Copyright, and Other Protected Material:

Asbestos Subcontractor shall assume all responsibilities for any claims or suits for infringements or on account of any patent rights connected with any or all of the materials, appliances, articles or systems used in the performance of this Work, and shall protect the SCA and hold it harmless against any such claims or suits which may be brought before or after completion of the Work.

Asbestos Subcontractor's Employees:

Asbestos Subcontractor's employees shall have sufficient technical qualifications, licenses, experience in training in asbestos control, the abatement of asbestos containing material, the transport, storage and disposal of waste which contains asbestos and the reinsulation of areas from which asbestos containing material has been removed, necessary to commence, prosecute and complete the Work contemplated to be performed by Subcontractor in strict accordance with Contract Documents, Current Legal Requirements and Current Industry Standards.

Asbestos Subcontractor shall be responsible for its own labor relations with any trade or union represented among its employees, and shall expeditiously resolve any disputes between Asbestos Contractor and its employees or anyone representing such employees. Asbestos Subcontractor agrees that it shall instruct, train and provide with required protective devices, all workers of other trades who must enter any site before it is certified clean and are permitted to do so by Current Legal Requirements or Current Industry Standards. The instructions shall include, at a minimum, proper use and fitting of respiratory protective devices and protective clothing, entry and exit procedures for all Work areas, hazards of asbestos exposure, Work procedures, and other safety requirements contained in the Contract Documents. Proof of such instruction, licenses and/or certifications for all Asbestos Subcontractor's workers, shall be recorded in the daily log and supplied upon request of the SCA or the Consultant.

Superintendence by Asbestos Subcontractor:

The Asbestos Subcontractor's Superintendent shall at all times during the work be licensed as an asbestos handler and supervisor, and shall possess and maintain in good standing throughout performance of the Work all other Licenses required by Current Legal Requirements or Current Industry Standards. Asbestos Subcontractor's Superintendent shall not assign or delegate its authority to another superintendent without the prior written consent of the SCA from the date of the commencement of Work to the date of Final Completion. In the event of such delegation, the replacement superintendent must meet the qualification set forth above.

Duties of Asbestos Subcontractor Upon Termination:

In the event the Subcontract of the Asbestos Subcontractor is terminated, the Asbestos Subcontractor agrees that it shall leave the Site in such condition as it will not cause danger or risk of harm to any person lawfully frequenting the environs, or be subject to legal action for violations of Current Legal Requirements. Asbestos Subcontractor represents that it shall leave the Site so that there will be no risk of harm to the employees of other contractors, subcontractors or the SCA at the Site.

Accident Prevention:

The Asbestos Subcontractor shall, at all times, take every precaution against injuries to persons or damage to property and for the safety of persons engaged in the performance of the Work. The Asbestos Contractor shall establish and maintain at all times safety procedures in connection with the Work as required by Current Legal Requirements.

Safety Programs:

The Asbestos Subcontractor shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work.

Risks Assumed by the Asbestos Subcontractor:

The Asbestos Subcontractor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the Asbestos Subcontractor or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the execution of the Work; and if any person shall make such a claim for any damage or injury, including death resulting therefrom, the Asbestos Subcontractor shall indemnify and hold harmless the Contractor, the Construction Manager, the Consultant, the SCA, the Department, the City of New York, and their agents, representatives, employees, principals, partners, officers and director (collectively, the "Indemnitee"), from any and all loss, expense, damage or injury that they may sustain as the result of any claim and the Asbestos Subcontractor shall assume, on behalf of any Indemnitee, the defense of any action at law or equity which may be brought against the Indemnitee, upon any claim and pay on behalf of the Indemnitee, upon demand, the amount of any judgment that may be entered against the Indemnitee. Notwithstanding the foregoing, the H-M Subcontractor shall not be liable for damages arising out of the presence of asbestos on the Site prior to the commencement of the Work except to the extent that such damages were caused or increased by Asbestos Subcontractor's actions, negligent failure to act, or non-compliance with Current Legal Requirements.

Claims Arising Out of or in Connection with the Work:

To the fullest extent permitted by law, Asbestos Subcontractor agrees to indemnify and hold harmless the Contractor, the Construction Manager, the Consultant, the SCA, the Department, and their agents, representatives, employees, principals, partners, officers and director (collectively, the "Indemnitee"), against any and all losses, claims, damages of every name and description, expenses, fines and penalties (including, but not limited to, consequential damages, economic loss, personal injury, emotional distress, distress claims, property damage, curing or defending against governmental violations and attorneys' fees and disbursements) resulting from any improper or defective materials, machinery, implement or appliance used, or from Asbestos Subcontractors' omissions, performance, negligence, carelessness or failure to perform under its Subcontract, or in guarding the Work and to defend at the request of any Indemnitee, with counsel reasonably satisfactory to the SCA, at Asbestos Subcontractor's sole expense, any suit, action or proceeding (including, but not limited to, any defense in connection with a governmental violation) brought against such Indemnitee, regardless of whether or not such claim, damage, loss or expense, etc., as set forth above, is caused in part by an Indemnitee.

If the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the work of Asbestos Subcontractor, or its subcontractors in their performance of this Subcontract, or from its or their failure to comply with any of the provisions of this Subcontract or Current Legal Requirements or Current Industry Standards, Asbestos Subcontractor shall indemnify and hold each Indemnitee harmless from any and all claims and judgments for damages and from costs and expenses to which any Indemnitee may be subject or which it may suffer or incur by reason thereof. The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against Asbestos Subcontractor, the Contractor, the Construction Manager, the Consultant, the SCA, the Department or the City of New York.

Warranty:

The Asbestos Subcontractor warrants that it is aware of and understands the hazards which are presented to persons, property, and the environment in the performing of investigative, monitoring, sampling, transportation, storage, remediation and disposal services as described within the scope of services of this Subcontract. It will transport, store, remediate and dispose of such materials in full compliance with all applicable governmental laws, regulations and orders. If the scope of services requires off-site storage or disposal, the selected storage and disposal facilities described in the Work plan are now appropriately licensed and permitted to store and dispose of the waste, materials or hazardous substance detailed within the Work plan. In the event the storage or disposal facility loses its permitted status hereafter during the terms of this Asbestos Subcontract, the Asbestos Subcontractor shall promptly notify the Consultant and the Contractor or Construction Manager, and the SCA of such loss.

Payment:

No payment shall be made to the Asbestos Subcontractor until the following items are delivered to the SCA and Consultant:

1. Proof of licensing as an asbestos abatement Contractor;
2. Certification by Consultant indicating a) the status of the Work; b) that the work has been completed in compliance with Contract Documents and Current Legal Requirements; and c) Asbestos Subcontractor is entitled to payment.
3. Results of all personal and general air sampling;
4. Analysis of any bulk samples which may be taken during the Work;
5. Records of any equipment used on the Site, including manufacturers' names and specifications;
6. Disposal manifests and receipts, received since the last progress payment, for all asbestos containing material taken from the Site; and
7. Copies of medical exams of Asbestos Subcontractor's employees.

Protection of Lives and Health:

The Asbestos Subcontractor shall comply fully with all applicable provisions of the laws of the State of New York, the United States of America and with all applicable rules and regulations of New York or the United States of America or other applicable governmental authority. The Asbestos Subcontractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970. Asbestos Subcontractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Labor and the standards imposed under the Federal Occupational Safety and Health Act of 1970, the National Emissions Standards for Hazardous Air Pollutants promulgated by the Environmental Protection Agency, the Asbestos Hazard Emergency Response Act of 1986, the New York State School Asbestos Safety Act, the New York State Industrial Code, Rule 56, New York City Local Law 70/1985, 76/1985, 80/1986, 21/1987 and 101/1989, all regulations and provisions enacted by the National Institute for Occupational Safety and Health, the Department of Health and Human Services, the Department of Environmental Protection, the United States Department of Transportation, and the New York State Department of Labor as each has been or may be amended. Any failure to take all steps and cause all conditions to protect the health, safety and welfare of all persons affected by the Work which are (a) required by law, Current Legal Requirements or Current Industry Standards; (b) required by the Contract Documents; or (c) directed to be made by the Consultant, the Contractor, the Construction Manager, the SCA, or a governmental agency having or asserting jurisdiction over the Work, may result in the issuance of a Stop Work Order by the Consultant, the Contractor, the Construction Manager, or the SCA, without prior warning of any kind. In the event the SCA orders Asbestos Subcontractor to stop the Work or any portion thereof, any and all costs incurred by the SCA due to such Work stoppage shall be borne by Asbestos Subcontractor.

In the event the Work is stopped for any reason, including but not limited to requests by the Contractor or Construction Manager, the SCA, or any governmental body having or asserting jurisdiction over the Work or the termination of the Asbestos Subcontract by any party, Asbestos Subcontractor must nevertheless immediately take any and all actions necessary (i) to ensure the health, safety and welfare of all students, employees, guests or other occupants of the Site and its environs; and (ii) to comply with Current Legal Requirements and Current Industry Standards.

The Asbestos Subcontractor shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment of Work under the Asbestos Subcontract, and shall immediately send a Notice to the Consultant, the Contractor, the Construction Manager, and the SCA of any injury which results in hospitalization or death.

The Asbestos Subcontractor alone shall be responsible for the safety, efficiency and adequacy of the Asbestos Subcontractor's Work, plant, appliances and methods, and for any damage which may result from the failure or the improper construction, maintenance, or operation of such Work, plant, appliances and methods.

Documentation:

At least five days prior to the commencement of the work, Asbestos Subcontractor shall furnish documentation that its firm and employees are familiar with the regulations of the United States Department of Labor, Occupational Safety and Health Administration, the United States Department of Transportation, and of the State and City of New York as applicable relating to the application, abatement, handling, storage, disposal, and treatment of asbestos and the reinsulation of areas from which asbestos containing material has been removed.

Professional Status Requirements:

The Asbestos Subcontractor shall comply, at its own expense, with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, Subcontractors and others employed to undertake and complete the Work hereunder.

Asbestos Subcontractor shall furnish written proof, by verified statement, upon request of Consultant or the SCA, that all of its employees have had instruction on the dangers of asbestos, respirator use, proper fit testing of approved respirators, and documentation. Asbestos Subcontractor shall further document that all workers (supervisors and asbestos handlers) have completed an approved safety and health program, endorsed and conducted by the Environmental Protection Agency, the State and/or City of New York, as applicable. Documentation shall consist of all licenses required by Current Legal Requirements.

Record Retention:

Asbestos Subcontractor shall maintain for a period of not less than 40 years complete and accurate written records (i) showing the progress of the Work, (ii) of all the employees' medical examinations and (iii) evidence of the results of the monitoring of air samples at the Site of the Work. True and complete copies of such records shall be furnished to the SCA and Consultant prior to final payment. Asbestos Subcontractor further agrees that, if so requested by the SCA or the Consultant, Asbestos Subcontractor shall provide the aforementioned information periodically during the performance of the Work.

APPENDIX G

TAX EXEMPTION

- 1) New York State Department of Taxation and Finance, New York State and Local Sales and Use Tax, Contractor Exempt Purchase Certificate, Form ST-120.1 and Instructions.
- 2) New York State Department of Taxation and Finance letter dated July 9, 2009, confirming that the New York City School Construction Authority is an organization exempt from payment of New York State sales and use taxes, and
- 3) New York State Department of Taxation and Finance Technical Memorandum dated October 23, 2014 addressing Sales Tax Treatment of “Certain Temporary Facilities Provided at Construction Sites”.



Contractor Exempt Purchase Certificate

(5/16)

To be used only by contractors who are registered with the Tax Department for sales tax purposes.

To vendors: You must collect tax on any sale of taxable property or services unless the contractor gives you a properly completed exempt purchase certificate not later than 90 days after the property is sold or service is rendered. In addition, you must keep the certificate for at least three years, as explained in the instructions.

This form cannot be used to purchase motor fuel or diesel motor fuel exempt from tax.

To contractors and vendors: Read the instructions on pages 3 and 4 carefully before completing or accepting this certificate.

Table with 2 columns: Seller information (Name, Street address, City, State, ZIP code) and Purchasing contractor information (Name, Street address, City, State, ZIP code).

- 1. I have been issued a New York State Certificate of Authority, (enter your sales tax identification number), to collect New York State and local sales and use tax, and that certificate has not expired or been suspended or revoked.
2. The tangible personal property or service being purchased will be used on the following project:

located at
for and with
pursuant to prime contract dated

- 3. These purchases are exempt from sales and use tax because: (Mark an X in the appropriate box; for further explanation, see items A through P in the instructions on pages 3 and 4.)

- A. The tangible personal property will be used in the above project to create a building or structure or to improve real property or to maintain, service, or repair a building, structure, or real property, owned by an organization exempt under Tax Law section 1116(a).
B. The tangible personal property is production machinery and equipment, and it will be incorporated into real property.
C. The tangible personal property will be used: in an Internet data center when the property is to be incorporated as part of a capital improvement; or directly and predominantly in connection with telecommunications services for sale or Internet access services for sale; or directly and predominantly by a television or radio broadcaster in connection with producing or transmitting live or recorded programs.
D. The tangible personal property, including production machinery and equipment, is for installation in the above project and will remain tangible personal property after installation.
E. The tangible personal property will become an integral component part of a building, structure, or real property, used predominantly (more than 50%) either in the production phase of farming or in a commercial horse boarding operation, or in both.

Note: This certificate is not valid unless the purchaser completes the certification on page 2.

- F. The machinery or equipment will be used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. The tangible personal property is residential or commercial solar energy systems equipment. **(Note:** Item G purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item G purchases may be exempt from local taxes. See instructions.)
- H. The tangible personal property will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Sales and Use Tax Exemptions on Certain Purchases of Tangible Personal Property and Services for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year.
- I. The tangible personal property is machinery or equipment used directly and predominantly in loading, unloading, and handling cargo at a qualified marine terminal facility in New York City. This exemption does **not** apply to the local tax in New York City.
- J. The tangible personal property is commercial fuel cell systems equipment. **(Note:** Item J purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item J purchases may be exempt from local taxes. See instructions.)
- K. The services are for the project described in line 2 on page 1 and will be resold. (This includes trash removal services in connection with repair services to real property.)
- L. The services are to install, maintain, service, or repair tangible personal property used in an Internet data center, for telecommunication or Internet access services, or for radio or television broadcast production or transmission.
- M. The services are to install, maintain, service, or repair tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both provided such tangible personal property will become an integral component part of such structure, building, or real property.
- N. The services are to install residential or commercial solar energy systems equipment.
- O. The services are to install tangible personal property purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year, that will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S.
- P. The services are to install or maintain commercial fuel cell systems equipment.

Caution: Contractors may **not** use this certificate to purchase services tax exempt unless the services are resold to customers in connection with a project. Construction equipment, tools, and supplies purchased or rented for use in completing a project but that do not become part of the finished project may not be purchased exempt from tax through the use of this certificate.

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Type or print name and title of owner, partner, or authorized person of purchasing contractor	
Signature of owner, partner, or authorized person of purchasing contractor	Date prepared

Substantial penalties will result from misuse of this certificate.

Instructions

includes machinery, equipment, and other tangible personal property used by a broadcaster directly and

Only a contractor who has a valid *Certificate of Authority* issued by the Tax Department may use this exempt purchase certificate. The contractor must present a properly completed certificate to the vendor to purchase tangible personal property, or to a subcontractor to purchase services tax exempt. This certificate is not valid unless all entries have been completed.

The contractor may use this certificate to claim an exemption from sales or use tax on tangible personal property or services that will be used in the manner specified in items A through P below. The contractor may not use this certificate to purchase tangible personal property or services tax exempt on the basis that Form ST-124, *Certificate of Capital Improvement*, has been furnished by the project owner to the contractor.

The contractor must use a separate Form ST-120.1, *Contractor Exempt Purchase Certificate*, for each project.

Purchase orders showing an exemption from the sales or use tax based on this certificate must contain the address of the project where the property will be used, as well as the name and address of the project owners (see page 1 of this form). Invoices and sales or delivery slips must also contain this information (name and address of the project for which the exempt purchases will be used or where the exempt services will be rendered, as shown on page 1 of this form).

Use of the certificate

Note: Unless otherwise stated, the customer must furnish the contractor a properly completed Form ST-121, *Exempt Use Certificate*.

This certificate may be used by a contractor to claim exemption from tax only on purchases of **tangible personal property** that is:

- A. Incorporated into real property under the terms of a contract entered into with an exempt organization that has furnished the contractor with a copy of Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, governmental purchase order, or voucher.
- B. Production machinery or equipment that will be incorporated into real property.
- C. Used in one of the following situations:
 - Machinery, equipment, and other tangible personal property related to providing website services for sale to be installed in an Internet data center when the property is to be incorporated as part of a capital improvement. The customer must furnish the contractor a completed Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)*.
 - Used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching, or monitoring of switching of telecommunications services for sale, or Internet access service for sale.
 - Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used by a television or radio broadcaster directly and predominantly in the production and post-production of live or recorded programs used by a broadcaster predominantly for broadcasting by the broadcaster either over-the-air or for transmission for transmission through a cable television or direct broadcast satellite system. (Examples of exempt machinery and equipment include cameras, lights, sets, costumes, and sound equipment.) This exemption also

predominantly to transmit live or recorded programs.
(Examples of exempt machinery and equipment include amplifiers, transmitters, and antennas.)

- D. Installed or placed in the project in such a way that it remains tangible personal property after installation. The contractor must collect tax from its customer when selling such tangible personal property or related services to the customer, unless the customer gives the contractor an appropriate and properly completed exemption certificate.
- E. Going to become an integral component part of a structure, building, or real property used predominantly (more than 50%) either in the production phase of farming or in a commercial horse boarding operation, or in both, for which the customer has provided the contractor a completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*.
- F. Machinery or equipment used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. Residential or commercial solar energy systems equipment. *Residential solar energy systems equipment* means an arrangement or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water, and/or electricity. *Commercial solar energy systems equipment* means an arrangement or combination of components installed upon nonresidential premises that utilize solar radiation to produce energy designed to provide heating, cooling, hot water, or electricity. The exemption is allowed on the 4% New York State tax rate and where applicable, the $\frac{3}{8}$ % MCTD rate. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. The customer must furnish the contractor a completed Form ST-121 by completing the box marked *Other* (U.). For the definition of *residence* and for an exception relating to recreational equipment used for storage, as well as for other pertinent information, see TSB-M-05(11)S, *Sales and Use Tax Exemption for Residential Solar Energy Systems Equipment*. For the definition of *nonresidential premises*, as well as other pertinent information, see TSB-M-12(14)S, *Sales and Use Tax Exemption for the Sales and Installation of Commercial Solar Energy Systems Equipment*.
- H. Delivered and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Sales and Use Tax Exemptions on Certain Purchases of Tangible Personal Property and Services for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased within the first year of the qualifying tenant's lease.
- I. Machinery and equipment used at qualified marine terminal facilities located in New York City. The machinery and equipment must be used directly and predominantly in loading, unloading, and handling cargo at marine terminal facilities located in New York City that handled more than 350,000 twenty foot equivalent units (TEUs) in 2003. For purposes of this exemption, the term *TEU* means a unit of volume equivalent to the volume of a twenty-foot container. This exemption does **not** apply to the local tax in New York City.

J. Beginning June 1, 2016, commercial fuel cell systems equipment. *Commercial fuel cell systems equipment* means an electric generating arrangement or combination of components that is installed upon nonresidential premises and utilizes solid oxide, molten carbonate, a proton exchange membrane, phosphoric acid, or a linear generator to provide heating, cooling, hot water, or electricity. The exemption is allowed on the 4% New York State tax rate and the $\frac{3}{8}$ % MCTD rate, if applicable. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. The customer must furnish the contractor a completed Form ST-121 by completing the box marked *Other (U.)*. See TSB-M-16(3)S, *Sales and Use Tax Exemptions Related to Commercial Fuel Cell Systems Equipment*, for more information.

This certificate may also be used by a contractor to claim exemption from tax on the following **services**:

K. Installing tangible personal property, including production machinery and equipment, that does not become a part of the real property upon installation.

Repairing real property, when the services are for the project named on page 1 of this form and will be resold.

Trash removal services rendered in connection with repair services to real property, if the trash removal services will be resold.

Note: Purchases of services for resale can occur between prime contractors and subcontractors or between two subcontractors. The retail seller of the services, generally the prime contractor, must charge and collect tax on the contract price, unless the project owner gives the retail seller of the service a properly completed exemption certificate.

L. Installing, maintaining, servicing, or repairing tangible personal property used for Web hosting, telecommunication or Internet access services, or by a broadcaster (described in item C on page 3).

M. Installing, maintaining, servicing, or repairing tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both (described in item E on page 3).

N. Installing qualifying residential or commercial solar energy systems equipment (described in item G on page 3).

O. Installing tangible personal property delivered to and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located.

P. Installing or maintaining commercial fuel cell systems equipment (described in item J above).

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- a penalty equal to 100% of the tax due;
- a \$50 penalty for each fraudulent exemption certificate issued;
- criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- revocation of your Certificate of Authority, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases that qualify for exemption from sales and use tax, the contractor must provide you with this exemption certificate with all entries completed to establish the right to the exemption.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

Failure to collect sales or use tax, as a result of accepting an improperly completed exemption certificate or receiving the certificate more than 90 days after the sale, will make you personally liable for the tax plus any penalty and interest charges due.

You must maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must also keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Caution: You will be subject to additional penalties if you sell tangible personal property or services subject to tax, or purchase or sell tangible personal property for resale, without possessing a valid *Certificate of Authority*. In addition to the criminal penalties imposed under the New York State Tax Law, you will be subject to a penalty of up to \$500 for the first day on which such a sale or purchase is made; plus up to \$200 for each subsequent day on which such a sale or purchase is made, up to the maximum allowed.

Need help?



Visit our website at www.tax.ny.gov

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- check for new online services and features



Telephone assistance

(518) 485-9863

To order forms and publications:

(518) 457-5431

Text Telephone (TTY) Hotline (for persons with

hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the

Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



New York State Department of
TAXATION and FINANCE
OTPA Sales Tax Exempt Organizations Unit
Building 9 Room 154
W.A. Harriman Campus
Albany, NY 12227

Tax Id: 13-3535408

July 9, 2009

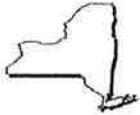
New York City School Construction Authority
Charles A Doherty Manager-Finance
30-30 Thomson Avenue
Long Island City, NY 11101-3045

Dear Sir or Madam:

The Tax Law exempts New York State governmental entities such as your organization, New York City School Construction Authority, from the payment of New York State sales and use taxes on their purchases. In order to make tax exempt purchases, a New York State governmental entity must present vendors with the entity's official purchase order or other documentation (e.g., payment voucher, contract of sale, Form AC 946, *Tax Exemption Certificate*, Form ST-129, *Exemption Certificate - Tax on occupancy of hotel rooms*, etc.) which indicates that the purchaser is a New York State governmental entity.

Tax exemption numbers and Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, are not issued to New York State governmental entities. If a vendor requests a tax exemption number or Form ST-119.1, *Exempt Organization Exempt Purchase Certificate* from you, the New York City School Construction Authority may give the vendor a copy of this letter. This will assure the vendor that a governmental purchase order, or other evidence that the New York City School Construction Authority is the purchaser, is the only documentation the vendor needs in order to not collect sales tax.

New York State Department of Taxation and Finance
OTPA-Taxpayer Guidance Division
Sales Tax - Exempt Organizations Unit
Building 9, Room 154
W.A. Harriman Campus
Albany, NY 12227
(518) 457-2782



Sales Tax Treatment of Certain Temporary Facilities Provided at Construction Sites

This memorandum explains the Tax Department's application of sales and use taxes (sales tax) to temporary scaffolding, temporary pedestrian walkways (sidewalk bridges), and temporary hoisting systems installed at construction sites.

The purpose of this TSB-M is to clarify the Tax Department's policy regarding the application of New York State and local sales and use taxes (sales tax) to temporary scaffolding, temporary protective pedestrian walkways, and temporary hoisting systems (referred to collectively as *scaffolding systems*) that are used in construction projects. The TSB-M reflects the decision of the Tax Appeals Tribunal in *Matter of L & L Painting Co. Inc.* (June 2, 2011) regarding the exclusion from sales tax for the installation of a "temporary facility" at a construction site, and sets forth rules and guidelines with respect to other related sales tax issues affecting the scaffolding systems industry. To the extent that the department's policy concerning any of these other related issues is new, it will be **effective January 1, 2015**. Any other statements previously issued by the department that suggest contrary conclusions than those reached in this TSB-M do not represent current policy and can no longer be relied upon.

Note: Any statements issued by the department prior to January 1, 2015, remain in effect for the duration of any contracts entered into before such date. That is, the department's policies applicable to transactions made under a contract entered into before January 1, 2015, remain applicable to transactions made under that contract after January 1, 2015.

General

For purposes of this memorandum, the term *scaffolding systems* means fixed structures that are used to support, protect, or convey people or materials during the construction or repair of buildings and other real property. Among the qualifying structures considered in this classification are shoring and suspended scaffolding. Hoisting systems included within the meaning of *scaffolding systems* are only those types that are similar to elevators and other conveyances found in permanent structures. Other types of hoisting systems do not qualify. In addition, the term *scaffolding systems* does not include construction equipment that can be readily moved within a construction site (e.g., on wheels or casters), including scaffolding, pedestrian walkways, cranes, or hoists.

Scaffolding systems are necessary components of most major construction projects. Construction projects may result in exempt capital improvements to real property or taxable installation, maintenance, servicing, and repair jobs. Generally a prime contractor on a major construction project will enter into a subcontract with a scaffolding systems provider that is typically structured to include charges for the rental of the scaffolding system and for the labor to install and dismantle it. These charges are billed on either:

- a lump sum basis for all aspects of the service, including but not limited to, rental, installation, and dismantling of the scaffolding system; or
- a separately stated basis that reflects itemization of the various rental and labor components (the rental charge is typically a minority percentage of the total charge for the contract).

A subcontract to furnish, install, and dismantle a scaffolding system at a construction site is considered to be a subcontract to provide a service (*scaffolding service*), irrespective of whether the subcontract is billed on a lump sum or a separately stated basis. The subcontractor would owe sales tax on its purchases or rentals of scaffolding materials, and would be ineligible to claim the resale exclusion (i.e., cannot provide its supplier with Form ST-120, *Resale Certificate*).

Applicable tax law and regulations

For construction projects in general, a contractor's receipts from the sale of installing tangible personal property are subject to sales tax under Tax Law section 1105(c)(3), and receipts from the sale of maintaining, servicing, or repairing real property are subject to sales tax under section 1105(c)(5). However, sales tax is not imposed on services for the installation or construction of a capital improvement to real property.

In order for a construction project to constitute a capital improvement, the criteria in Tax Law section 1101(b)(9) must be satisfied. To constitute a capital improvement, section 1101(b)(9) requires that the construction project result in an addition or alteration to real property that:

- substantially adds to the property's value or appreciably prolongs its useful life;
- becomes part of the property or is permanently affixed so that removal would cause material damage to the property or article itself; and
- is intended to be a permanent installation.

Capital improvements to real property are distinguished from maintaining, servicing, and repairing real property by the "end result" test. If the end result of the services is the repair or maintenance of real property, the services are taxable. If the end result of the same services is a capital improvement to the property, the services are not taxable (20 NYCRR 527.7[b][4]).

The exclusion from sales tax on the services of installing or constructing a capital improvement extends to charges for the "installation of materials and labor" to provide "temporary facilities at construction sites," including temporary protective pedestrian walkways, where the temporary facility is a necessary prerequisite to the construction of the capital improvement. The following provisions of section 541.8(a) of the regulations pertain to subcontracts to provide certain temporary facilities at capital improvement construction sites:

Subcontracts to provide temporary facilities at construction sites, which are a necessary prerequisite to the construction of a capital improvement to real property, are considered a part of

the capital improvement to real property. Charges for installation of materials and the labor to provide temporary heat, temporary electric service, temporary protective pedestrian walkways, and temporary plumbing by a subcontractor are therefore not subject to tax provided the subcontractor receives a copy of the properly completed certificate of capital improvement issued by the customer to the contractor.

Accordingly, the determination of whether the installation of a temporary facility is subject to sales tax depends on the nature of the underlying work being performed at the construction site where the facility is installed. If the construction project qualifies as a capital improvement, then the charges for the installation of the temporary facility are not subject to sales tax. If the construction project does not qualify as a capital improvement, then the charges for the installation are subject to sales tax.

Tax Department policy

The following sections describe the Tax Department's policy with respect to charges for temporary facilities at construction sites and the applicability of section 541.8 of the sales tax regulations to the taxability of scaffolding systems.

Scaffolding services provided in capital improvement projects

When provided in connection with a capital improvement project, a scaffolding service is one of the services covered by the exclusion from sales tax described in section 541.8(a) of the regulations. As a result, amounts charged by a subcontractor for scaffolding services qualify as charges for a "temporary facility" that are not subject to sales tax provided that the underlying construction project qualifies as a capital improvement. Accordingly, all charges made by a subcontractor for materials and labor necessary to provide a scaffolding service at a construction site are not subject to sales tax if the end result of the underlying construction project, when viewed as a whole, qualifies as a capital improvement and is supported by the issuance of a valid Form ST-124, *Certificate of Capital Improvement*. Both lump sum and separately stated contracts are treated the same for sales tax purposes.

When a subcontractor provides scaffolding services in connection with a construction project that qualifies as a capital improvement, the subcontractor is, however, liable for the payment of sales tax on its own purchases or rentals of materials acquired to provide the scaffolding service because these purchases and rentals do not qualify as purchases for resale (20 NYCRR 541.8[b]). This sales tax liability also applies to purchases and rentals of materials from a related entity. That is, if the subcontractor purchases or rents a scaffolding system from a related entity, the charge for the purchase or rental is subject to tax. Moreover, the charge must be reasonable in view of prevailing market sale or rental prices for the scaffolding system.

Example 1: *A subcontractor contracts with a prime contractor constructing an office building to provide the materials and labor necessary to furnish a temporary scaffolding system to support the various trades in performing their work. The contract includes separately stated charges for rental, installation, and dismantling of the scaffolding system. The subcontractor must purchase a quantity of tubing, clamps, and platforms in*

order to provide the scaffolding service. The scaffolding service is considered a necessary prerequisite to the construction of a capital improvement and, therefore, the subcontractor's separately stated charges to the prime contractor for rental, installation, and dismantling of the scaffolding system are not subject to sales tax. However, the subcontractor must pay the sales tax due on its purchases of all materials needed to provide the scaffolding service, even if purchased from a company that is the subcontractor's wholly-owned affiliate. Charges by the affiliate to the subcontractor for the materials must be reasonable, reflecting a fair market value.

Scaffolding services provided in installation, maintenance, servicing, or repair projects

A scaffolding service provided as part of a taxable installation, maintenance, servicing, or repair project is a taxable service and is subject to sales tax whether billed on either a lump sum or separately stated basis. The rental, installation, and dismantling of the scaffolding system are all elements of the total receipts for the scaffolding service that are subject to sales tax. The subcontractor or repairman must charge sales tax to the prime contractor on the complete lump sum charged for the scaffolding service or, alternatively, on all of the separately stated charges including dismantling of the scaffolding system.

When a subcontractor or repairman provides scaffolding services in connection with a taxable installation, maintenance, servicing, or repair project, the subcontractor or repairman is liable for payment of sales tax on its purchases of the materials obtained to provide the scaffolding service because the subcontractor or repairman is using the materials for its own purposes to perform construction activities subject to tax. The materials do not become a "physical component part" of the property serviced and are not actually transferred to the customer as required for application of the exclusion from tax under Tax Law section 1101(b)(4)(i). Moreover, the purchase of the scaffolding service by the prime contractor does not qualify as a purchase for resale because the prime contractor is using the service for its own purposes and will not be reselling it.

Example 2: *The facts are the same as in Example 1 except the work being performed by the prime contractor is a taxable repair job and not a capital improvement. In this situation the scaffolding service itself is a taxable service and therefore the subcontractor's separately stated charges to the prime contractor for rental, installation, and dismantling of the scaffolding system are subject to sales tax. The subcontractor is liable for the sales tax due on its purchases or rentals of all materials obtained to provide the scaffolding service.*

Scaffolding materials purchased outside of New York State

A subcontractor's out-of-state purchases or rentals of materials that are used to provide scaffolding services within this state are subject to use tax on the date the materials are first brought into New York State. The tax is based on the purchase price of the materials, unless:

- the materials are used outside this state by the subcontractor for more than six months prior to their use in New York, in which case the tax is based on the lesser of the

- purchase price or the fair market value of the materials (but not to exceed their cost) at the time of first use in New York; or
- the materials brought into New York (other than for complete consumption) will be used for a period of less than six months, in which case the subcontractor may elect to pay the use tax based on the fair rental value of the materials for the period of use within New York.

The subcontractor may be eligible for a reciprocal tax credit against the use tax due for sales or use tax paid in another state, provided the other state provides a reciprocal credit for sales or use taxes paid to New York State. For more information on claiming and calculating a reciprocal credit for sales or use taxes paid to another state, see Tax Bulletin *Reciprocal Credit for Sales or Use Taxes Paid to Other Taxing Jurisdictions* (TB-ST-765).

Scaffolding materials purchased by persons other than contractors, subcontractors, or repairmen

When scaffolding materials are purchased by a person exclusively for the purpose of reselling or renting the scaffolding materials to others (i.e., without the lessor providing any accompanying services), the scaffolding materials may be purchased for resale without payment of sales tax. The purchaser should furnish its supplier with a properly completed Form ST-120, *Resale Certificate*. Charges by the purchaser for the sale or rental of the scaffolding materials to a related entity must be reasonable in view of prevailing market sale or rental prices.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.