State University Construction Fund

AGREEMENT

This Agreement made as of the                day of                 , 20        , by and between
the State University Construction Fund, whose address
is The State University Plaza, 353 Broadway, Albany,
New York 12246, hereinafter referred to as the "Fund", and

hereinafter referred to as the "Contractor".

WITNESSETH:

The parties hereto agree that the Contractor shall (a) furnish and perform all work of every kind required and all other things necessary to complete in the most substantial and workmanlike manner the construction of

at the State University

in strict accordance with the Contract Documents; (b) complete all work necessary for substantial completion by

or within    days, starting 10 days after OSC approval.

[INSTRUCTIONS: Identify substantial completion date above utilizing only one method].

or within the time to which such completion may have been extended in accordance with the Contract Documents; (c) in the event it fails to substantially complete all the work on time, pay to the Fund liquidated damages in the amount of

for each calendar day of delay of substantially completing all the work; and (d) do everything required by the Contract; subject, however, to the terms, provisions and conditions listed hereinafter.

Article I

General Provisions

Section 1.01 Definitions

Where the following words and expressions are used in the Contract Documents it is understood that they have the meaning set forth as follows:

Consultant  The Architect or Engineer named in the Notice to Bidders or such other person or firm designated by the Fund to provide general administration of the Contract and inspection of the work.

Bidding Documents  Notice to Bidders, Information for Bidders and Proposals

Bonds  Performance Bond and Labor and Material Bond

Contract Documents  The Agreement, Bonds, Specifications, Drawings, Addenda issued prior to the opening of bids and Change Orders issued after award of the Contract.

Fund or Owner  State University Construction Fund

Notice of Award  Letter of Intent

Project  The facility or facilities to be constructed including all usual, appropriate and necessary attendant work shown on, described in or mentioned in the Contract.

Site  The area within the Contract limit lines, as shown on the Drawings, and all other areas upon which the Contractor is to perform work.

Work  The using, performing, installing, furnishing and supplying of all materials, equipment, labor and incidentals necessary or proper for or incidental to the successful completion of the Project and the carrying out of all duties and obligations imposed upon the Contractor by the Contract.
Section 1.02 Captions

The titles or captions of Articles and Sections of the Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof or of the Contract or in any way affect the Contract.

Section 1.03 Nomenclature

Materials, equipment or other work described in words which have a well-known, technical or trade meaning shall be interpreted as having such meaning in connection with the Contract.

Section 1.04 Entire Agreement

The Contract constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.

Section 1.05 Successors and Assigns

The Contract shall bind the successors, assigns and representatives of the parties hereto.

Section 1.06 Accuracy and Completeness of Contract Documents

(1) The Contract Documents are complementary and what is called for by any one shall be as binding as it called for by all. The intention of the documents is to include all materials, plant, equipment, tools, skill and labor of every kind necessary for the proper execution of the work and also those things which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.

(2) The Contract Documents contemplate a finished piece of work of such character and quality as is reasonably inferable from them. The Contractor acknowledges that the contract consideration includes sufficient money allowance to make its work complete and operational and in compliance with good practice and it agrees that inadvertent minor discrepancies or omissions or the failure to show details or to repeat on any part of the Contract Documents the figures or notes given on another shall not be the cause for additional charges or claims. In case of a conflict between any part or parts of the Contract Documents with any other part or parts thereof, as contrasted to an omission or failure to show details or to repeat on any part of the Contract Documents the figures or notes given on another part thereof, the following shall be given preference, in the order hereinafter set forth, to determine what work the Contractor is required to perform: (a) Addenda (later dates to take preference over earlier dates); (b) Amendments to Agreement; (c) Agreement; (d) Specifications; (e) Schedules; (f) Large scale detail Drawings (detail drawings having a scale of 3/4" and over); (g) Large scale plan and section Drawings (plan and section drawings having a scale equal to or larger than that used for the basic floor or site plan, as the case may be); (h) Small scale Detail Drawings (detail drawings having a scale of less than 3/4"); and (i) Small scale plan and section Drawings (plan and section drawings having a scale less than that used for the basic floor or site plan, as the case may be).

In the event of such a conflict between or among parts of the Contract Documents that are entitled to equal preference, the more expensive way of doing the work, the better quality or greater quantity of material shall govern unless the Fund otherwise directs.

Section 1.07 Organization of Contract Documents

The Specifications and Drawings are generally divided into trade sections for the purpose of ready references, but such division is arbitrary and such sections shall not be construed as the prescription by the Consultant or the Fund of the limits of the work of any subcontractor or as a determination of the class of labor or trade necessary for the fabrication, erection, installation or finishing of the work required. The Contractor will be permitted to allot the work of subcontractors at its own discretion regardless of the grouping of the Specifications and Drawings. It shall be the Contractor's responsibility to settle definitively with each subcontractor the portions of the work which the latter will be required to do. The Fund and the Consultant assume no responsibility whatever for any jurisdiction claimed by any of the trades involved in the work.

Section 1.08 Furnishing of Contract Documents

The Contractor shall be furnished, free of charge, with as many copies of the Specifications and Drawings as it may reasonably request, in the judgment of the Fund, within fifteen (15) working days after the Notice of Award. Any other copies of the Specifications and Drawings which the Contractor may desire can be obtained by it from the Consultant at the latter's cost of duplication thereof.

Section 1.09 Examination of Contract Documents and Site

By executing the Contract, the Contractor agrees that it has carefully examined the Contract Documents together with the site of the proposed work as well as its surrounding territory; that it is fully informed regarding
all the conditions affecting the work to be done and the labor and materials to be furnished for the completion of the Contract; and that its information has been acquired by personal investigation and research and not in the estimates and records of the Fund.

**Section 1.10 Invalid Provisions**

If any term or provision of the Contract Documents or the application thereof to any person, firm or corporation or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Contract Documents, or the application of such terms or provisions to persons, firms or corporations or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract Documents shall be valid and be enforced to the fullest extent permitted by law.

**Section 1.11 No Collusion or Fraud**

The Contractor hereby agrees that the Contract was secured without collusion or fraud and that neither any officer nor any employee of the Fund has or shall have a financial interest in the performance of the Contract or in the supplies, work or business to which it relates, or in any portion of the profits thereof.

**Section 1.12 Notices**

Any written notice required hereunder shall be deemed properly given, delivered and service thereof completed when said notice is deposited in any post office or post office box enclosed in a postpaid envelope properly addressed or when said notice, properly addressed, is sent by telegram or when said notice is delivered in person to the party to whom it is directed or their authorized representatives. The addresses of the Contractor, the Consultant and the Fund set forth in the Bidding Documents shall be deemed the place to which written notice to them shall be directed; provided, however, that any of such parties may by written notice to the others given pursuant to this Section designate a different address to which notices to it shall be directed or designate the name and address of another person, firm or corporation to whom notices to it may be directed.

**Section 1.13 Singular-Plural; Male-Female**

As used in the Contract Documents, the singular of any word or designation, whenever necessary or appropriate, shall include the plural and vice versa, and the masculine gender shall include the female and neuter genders and vice versa.

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**Article II Contract Administration and Conduct**

**Section 2.01 Consultant's Status**

(1) The Consultant, as the Fund's representative, shall provide general administration of the Contract and inspection of the work. The Consultant will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Consultant's duties, services and work shall in no way supersede or dilute the Contractor's obligation to perform the work in conformance with all Contract requirements, but it is empowered by the Fund to act in its behalf with respect to the proper execution of the work and to give instructions which are necessary to require such corrective measures as may be necessary, in its professional opinion, to insure the proper execution of the Contract or to otherwise protect the Fund's interest.

(2) The Consultant shall have the authority to stop the work or to require the prompt execution thereof whenever such action may be necessary, in its professional opinion, to insure the proper execution of the Contract or to otherwise protect the interests of the Fund.

(3) Except as otherwise provided in the Contract, the Consultant shall determine the amount, quality, acceptability, fitness and progress of the work covered by the Contract and shall decide all questions of fact which may arise in relation to the interpretation of the plans and Specifications, the performance of the work and the fulfillment by the Contractor of the provisions of the Contract. The Consultant shall in the first instance be the interpreter of the provisions of the Contract and the judge of its performance and it shall use its power under the Contract to enforce its faithful performance.

**Section 2.02 Finality of Decisions**

(1) Any decision or determination of the Consultant under the provisions of the Contract shall be final, conclusive and binding on the Contractor unless the Contractor shall, within ten (10) working days after such decision, make and deliver to the Fund a verified written statement of its contention that the decision of the Consultant is contrary to a provision of the Contract. The Fund shall thereafter determine the validity of the Contractor's contention. Pending decision by the Fund, the Contractor shall proceed in accordance with the Consultant's decision.

(2) Wherever it is provided in the Contract Documents
that an application must be made to the Fund and/or determination made by the Fund, the Fund's decision on such application and/or its determination under the Contract Documents shall be final, conclusive and binding upon the Contractor unless the same shall be determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith and unless the Contractor, within ten (10) working days after receiving notice of the Fund's decision or determination, files a written statement with the Fund and the Consultant that it reserves its rights in connection with the matters covered by said decision or determination.

Section 2.03 Claims and Disputes

(1) If the Contractor claims (i) that any work it has been ordered to do is extra work or (ii) that it has performed or is going to perform extra work or (iii) that any action or omission of the Fund or the Consultant is contrary to the terms and provisions of the Contract, it shall:

a. Promptly comply with such order;

b. File with the Fund and the Consultant, within five (5) working days after being ordered to perform the work claimed by it to be extra work or within five (5) working days after commencing performance of the extra work, whichever date shall be the earlier, or within five (5) working days after the said action or omission on the part of the Fund or the Consultant occurred, a written notice of the basis of its claim and request a determination thereof,

c. File with the Fund and the Consultant, within thirty (30) calendar days after said alleged extra work was required to be performed or said alleged extra work was commenced, whichever date shall be the earlier, or said alleged action or omission by the Fund or the Consultant occurred, a verified detailed statement, with documentary evidence, of the items and basis of its claim;

d. Produce for the Fund's examination, upon notice from the Fund, all its books of account, bills, invoices, payrolls, subcontracts, time books, progress records, daily reports, bank deposit books, bank statements, checkbooks and cancelled checks, showing all of its actions and transactions in connection with or relating to or arising by reason of its claim, and submit persons in its employment and in its subcontractors' employment for examination under oath by any person designated by the Fund to investigate any claims made against the Fund under the Contract, such examination to be made at the offices of the Contractor; and

e. Proceed diligently, pending and subsequent to the determination of the Fund with respect to any such disputed matter, with the performance of the Contract and in accordance with all instructions of the Fund and the Consultant.

(2) The Contractor's failure to comply with any or all parts of subdivision b of paragraph (1) of this Section shall be deemed to be: (i) conclusive and binding determination on its part 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 (ii) a waiver by the Contractor of all claims for additional compensation or damages as a result of said order, work, action or omission. The provisions of subdivision b of paragraph (1) of this Section are for the purpose of enabling the Fund to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects or circumstances giving rise to a claim, or take such other action as may seem desirable to verify any claimed expenses or circumstances as they occur. Compliance with such provisions is essential whether or not the Fund is aware of the circumstances of any order or other circumstances which might constitute a basis for a claim and whether or not the Fund has indicated it will consider a claim in connection therewith.

(3) No person has power to waive or modify any of the foregoing provisions and, in any action against the Fund to recover any sum in excess of the sum certified by the Fund to be due under or by reason of the Contract, the Contractor must allege in its complaint and prove at the trial compliance with the provisions of this Section.

(4) Nothing in this Section shall in any way affect the Fund's right to obtain an examination before trial or a discovery and inspection in any action that might be instituted by or against the Fund or the Contractor.

Section 2.04 Omitted Work

The Fund reserves the right at any time during the progress of the work to delete, modify or change the work covered by the Contract, by a Change Order thereto providing for either a reduction or omission of any portion of the work, without constituting grounds for any claim by the Contractor for allowances for damages or for loss of anticipated profits and in such event a deduction shall be made from the Contract consideration, the amount of which is to be determined
in accordance with the provisions of Section 4.02 of the Agreement.

Section 2.05 Extra Work

(1) The Fund reserves the right at any time during the progress of the work to add, modify or change the work covered by the Contract by a Change Order thereto providing for extra work of either a qualitative or quantitative nature and in such event the Contract consideration shall be increased by an amount to be determined in accordance with the provisions of Section 4.02 of the Agreement and the completion date for all or any part of the work shall be extended for such period of time as may be determined by the Fund as necessary, because of the extra work, to complete the work or any part thereof.

(2) Nothing in the Contract Documents shall excuse the Contractor from proceeding with the extra work as directed and, except as otherwise specifically provided for in a Change Order, the terms and conditions of the Contract Documents shall be fully applicable to all extra work.

(3) The Contractor shall have no claim for extra work if the performance of such work, in the judgment of the Consultant, is made necessary or desirable because of any act or omission of the Contractor which is not in accordance with the Contract.

(4) Notwithstanding the provisions of Section 2.06 of the Agreement and any other provisions of the Contract Documents to the contrary, an officer of the Fund, after conferring with the Consultant, shall have the right to overrule a determination or decision of the Consultant, that relates to whether certain work is included in the Contract Documents or is extra work, which he or she believes is incorrect; in the event an officer exercises such right, his or her determination or decision shall be final, conclusive and binding upon the Contractor and the Fund unless the same shall be determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith.

Section 2.06 Contractor to Give Personal Attention

(1) The Contractor shall give its constant personal attention to all the work while it is in progress and shall place the work in charge of a competent and reliable full-time superintendent acceptable to the Consultant and the Fund who shall have authority to act for the Contractor and who shall be accountable to the Consultant to the extent provided in the Contract. Unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in its employ, such superintendent shall not be changed without the written permission of the Consultant and the Fund.

(2) When the Contractor and its superintendent are temporarily absent from the site of the work, the Contractor or its superintendent shall designate a responsible supervisory employee to receive such orders as the Consultant or its representative may give. At no time shall any work be conducted on the site in the absence of an individual present who has been so designated by the Contractor or its superintendent as having authority to receive and execute instructions given by the Consultant or its representative.

Section 2.07 Employment of Workers

The Contractor shall at all times employ competent and suitable workers and equipment which shall be sufficient to proceed with the work to full completion in the manner and time specified. All workers engaged in special or skilled work shall have had sufficient experience in such work to properly and satisfactorily perform the same. Should the Consultant deem any employee of the Contractor or any subcontractor incompetent, careless, insubordinate or otherwise objectionable or whose continued employment on the work is deemed by the Consultant to be contrary to the public interest, it shall so advise the Contractor and the latter shall dismiss or shall cause the subcontractor, if such employee is employed by the latter, to dismiss such employee and such employee shall not again be employed on the work to be performed under the Contract without obtaining the prior written approval of the Consultant.

Section 2.08 Detailed Drawings and Instructions

Upon timely notice from the Contractor that supplementary information is required, the Consultant shall furnish additional instructions, by means of Drawings or otherwise, necessary for the proper execution of the work. All such Drawings and instructions shall be consistent with the Contract Documents, true developments thereof and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper Drawings and/or instructions.

Section 2.09 Contract Documents to Be Kept at Site

The Contractor shall keep at the site of the work a copy of the Drawings and Specifications and shall at all times give the Consultant and the Fund access thereto.

Section 2.10 Permits and Building Codes

The Contractor shall obtain from the proper authorities
all permits legally required to carry on its work, pay any and all taxes and fees legally required and shall be responsible for conducting its operations in accordance with the provisions of such permits. Except as otherwise expressly provided in the Contract Documents, all of the work covered by this Contract which is to be performed on property owned by the State University of New York is not subject to the building code of any city, county or other political subdivision of the State of New York. It is, however, subject to the provisions of the Building Code of New York State and the applicable Federal and State health and labor laws and regulations.

Section 2.11 Surveys

(1) From the data shown on the Drawings and identified at the site by the Consultant, a licensed surveyor, to be designated and paid for by the Fund, shall establish one (1) fixed benchmark and one (1) fixed base line at the site. The Contractor shall work from the benchmarks and base lines shown on the Drawings, identified at the site by the Consultant and established at the site by the aforesaid surveyor and shall establish such supplementary bench marks and base lines that are required in order for it to lay out the work. The Contractor shall be responsible for all measurements that may be required for execution of the work to the exact position and elevation as prescribed in the Specifications, shown on the Drawings, or as the same may be modified at the direction of the Consultant to meet changed conditions or as a result of modifications to the work covered by the Contract.

(2) The Contractor shall furnish, at its own expense such stakes and other required equipment, tools and materials, and all labor as may be required in laying out any part of the work. If, for any reason, monuments are disturbed, it shall be the responsibility of the Contractor to reestablish them, without cost to the Fund, as directed by the Consultant. The Consultant may require that construction work be suspended at any time when location and limit marks, established by the Contractor are not reasonably adequate to permit checking completed work or the work in progress.

(3) In all multiple-story construction, the Contractor shall establish and maintain line marks at each floor level and grade marks four (4) feet above the finished floor at each floor level.

Section 2.12 Site Conditions

(1) The Contractor acknowledges that it has assumed the risk and that the Contract consideration includes such provision as it deems proper for all physical conditions and subsurface conditions as it could reasonably anticipate encountering from the provisions of the Contract Documents, borings, rock cores, topographical maps and such other information as the Fund or the Consultant made available to it prior to the Fund’s receipt of bids or from its own inspection and examination of the site prior to the Fund’s receipt of bids.

(2) In the event that the Contractor encounters subsurface physical conditions or other latent physical conditions at the site differing substantially from those shown on or described or indicated in the Contract Documents and which could not have been reasonably anticipated from the aforesaid information made available by the Fund or the Consultant or from the Contractor’s aforesaid inspection and examination of the site, it shall give immediate notice to the Consultant of such conditions before they are disturbed. The Consultant will then promptly investigate the conditions and, if it finds that they do substantially differ from that which should have been reasonably anticipated by the Contractor, it shall make such changes in the Drawings and Specifications as may be necessary, and a Change Order shall be issued, the amount of which shall be determined in accordance with the provisions of Section 4.02, to reflect any increase or decrease in the cost of, or the time required for, performance of the Contract as a result of any of the aforesaid changes made by the Consultant and/or as a result of such unanticipated subsurface conditions.

Section 2.13 Right to Change Location

When additional information regarding the subsurface conditions becomes available to the Fund as a result of the excavation work, further testing or otherwise, it may be found desirable to change the location, alignment, dimensions or grades to conform to such conditions. The Fund reserves the right to make such reasonable changes in the work as, in its opinion, may be considered necessary or desirable; such changes and any adjustments in the Contract consideration as a result thereof are to be made in accordance with the provisions of Sections 2.04, 2.05 and 4.02 of the Agreement.

Section 2.14 Unforeseen Difficulties

Except as otherwise expressly provided in Section 2.12 of the Agreement and in other Sections of the Contract Documents, the Contractor acknowledges that it has assumed the risk and that the Contract consideration includes such provisions as it deems proper for any unforeseeable obstacles or difficulties which it may encounter in the performance of the work.

Section 2.15 Moving Materials and Equipment
Should it become necessary, in the judgment of the Consultant, at any time during the course of the work to move materials which are stored on the site and equipment which has been temporarily placed thereon, the Contractor upon request of the Consultant shall move them or cause them to be moved at its sole cost and expense; provided, however, if materials and equipment that have been stored or placed by the Contractor at a location on the site expressly approved, in writing, by the Consultant and the same are moved or caused to be moved by the Contractor at the Consultant's request, such removal shall be deemed extra work and the Contractor shall be compensated therefor in accordance with the provisions of Section 4.02 of the Agreement.

Section 2.16 Other Contracts

(1) Prior to and during the progress of the work hereunder the Fund reserves the right to let other contracts relating to the Project or in connection with work on sites within the Contract limit lines or adjoining or adjacent to that on which the work covered by this Contract is to be performed. In the event such other contracts are let, or have previously been let, the Contractor and such other contractors shall coordinate their work with each other, arrange the sequence of their work to conform with the progressive operation of all the work covered by such contracts and afford each other reasonable opportunities for the introduction and storage of their materials, supplies and equipment and the execution of their work. If the Contractor or such other contractors contend that their work or the progress thereof is being interfered with by the acts or omissions of the other or others or that there is a failure to coordinate or properly arrange the sequence of the work on the part of the Contractor or such other contractors, they shall, within five (5) working days of the commencement of such interference or failure of coordination or failure to perform work in proper sequence, give written notification to the Fund and the Consultant of such contentions. Upon receipt of such notification or on its own initiative, the Consultant shall investigate the situation and issue such instructions to the Contractor or such other contractors with respect thereto as it may deem proper. The Consultant shall determine the rights of the Contractor and of such other contractors and the sequence of work necessary to expedite the completion of all work covered by this Contract in relation to the work covered by said other contracts.

(2) The Contractor agrees that it has and will make no claim for damages against the Fund by reason of any act or omission to act by any other contractor or in connection with the Consultant's or Fund's acts or omissions to act in connection with such other contractor, but the Contractor shall have a right to recover such damages from the other contractors under a provision similar to the following provision which has been or will be inserted in the Contract with such other contractors.

(3) Should any other contractor, having or who shall hereafter have a contract with the Fund relating to the Project or in connection with the work on sites adjoining or adjacent to that on which the work covered by this Contract is to be performed, sustain any damage, during the progress of the work hereunder, through any act or omission of the Contractor, the Contractor agrees to reimburse such other contractor for all such damages and it further agrees to indemnify and save harmless the Fund from all claims for such damages.

(4) If the proper and accurate performance of the work covered by the Contract depends upon the proper performance and execution of work not included herein or depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Consultant any defects in such work that render it unsuitable for proper execution and results. Its failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the work covered by the Contract, except the latent defects which may be discovered thereafter.

Section 2.17 Inspection and Testing

(1) All materials and workmanship shall be subject to inspection, examination and testing by the Consultant and the Fund at all times during the performance of the work and at all places where the work is carried on. Except as otherwise herein specified, the Fund shall pay for the cost of inspection, examination and testing by the Consultant or the Fund. If, however, the tests prove that the materials and/or work tested do not meet the requirements of the Contract, then the entire cost of such tests is to be borne by the Contractor. The Consultant will have the right to reject defective material and workmanship furnished by the Contractor or require its correction. The Contractor, without charge therefor, shall satisfactorily and promptly correct all rejected work and replace all rejected material with proper material.

(2) The Contractor shall promptly segregate and remove from the site of the work all rejected material and work. If the Contractor shall fail to proceed at once with the replacing of rejected material and/or correction of defective workmanship, the Fund may, by contract or otherwise, replace such material and/or correct such workmanship, and charge the costs thereof to the Contractor or it may cancel the Contract and terminate the Contractor's employment as provided in the Agreement.

(3) The Contractor, without additional charge therefor,
shall promptly furnish all reasonable facilities, labor and materials necessary for the safe and convenient inspection and testing that may be required by the Consultant or the Fund.

(4) If the Contract Documents or the Consultant's instructions or the applicable laws, ordinances or regulations of any governmental authority require any part of the work covered by the Contract to be specially tested or inspected, the Contractor shall give the Consultant timely notice of its readiness for such testing or inspection or, if the same is to be performed by a governmental authority, of the date fixed therefor. If any such work, without the written permission of the Consultant, should be covered up prior to such testing or inspection, the Contractor, at its sole cost and expense must, if directed by the Consultant, uncover the same for testing or inspection and reconstruct same after the tests or inspection are conducted. All certificates of inspection or testing, involving the Contractor's work, required to be obtained from governmental authorities are to be secured by the Contractor at its sole cost and expense.

(5) Should it be considered necessary or advisable by the Consultant at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor, upon request, shall furnish all necessary facilities, labor and material to perform such examination. If the work subject to such examination is found to be defective or nonconforming in any manner due to the fault of the Contractor or any of its subcontractors, such uncovering or destruction and necessary reconstruction, even though such includes work not covered in the Contract, shall be at the expense of the Contractor. If, however, such work after testing and examination is found to be satisfactory, the Fund will pay the Contractor the cost of such uncovering or destruction and reconstruction, such cost to be determined as in the case of extra work as provided in Section 4.02.

(6) Inspection of material and furnished articles to be incorporated in the work may be made at the place of production, manufacture or shipment unless otherwise stated herein. The inspection of material and workmanship for final acceptance as a whole or in part will be made at the site of the work.

Section 2.18 Subcontractors

(1) Except for subcontractors designated by the Fund, or required to be named at any earlier date, pursuant to the provisions of the Information for Bidders, within thirty (30) calendar days after approval of the Office of the State Comptroller, the Contractor must submit a written statement to the Consultant giving the name and address of all proposed subcontractors. Said statement must contain a description of the portion of the work and materials which the proposed subcontractors are to perform and furnish and any other information tending to prove that the proposed subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the Contract Documents.

(2) If the Consultant finds that the proposed subcontractors are qualified, it will so notify the Contractor within ten (10) working days after receipt of the aforesaid information. If the determination is the contrary, however, the Consultant within such period will notify the Contractor of such determination and the latter, unless it decides to do such work itself and is qualified, in the Consultant's opinion, to do such work, must, within ten (10) working days thereafter, submit similar information with respect to other proposed subcontractors.

(3) The Consultant's approval of a subcontractor and/or the Fund's designation of a subcontractor pursuant to the provisions of the Contract Documents shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the Fund for the acts or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.

(4) The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work and it shall check all space requirements of the work and coordinate and adjust the same so that conflicts in space do not occur in the work being performed by it with its own employees and with the work being performed by its subcontractors and so that all equipment, piping, wiring, etc., can be installed, where possible, in the spaces allowed for same.

(5) No subcontractor shall be permitted to work at the site until: (a) it has furnished satisfactory evidence to the Consultant of the insurance required by law; (b) in the case of a Project involving a federal grant, it has furnished satisfactory evidence to the Consultant of the same type and amount of liability insurance as that required of the Contractor by Section 5.06 of the Agreement; and (c) except for subcontractors designated by the Fund pursuant to the provisions of the Information for Bidders, it has been approved by the Consultant.

(6) Within ten (10) working days after the Contractor
receives payment from the Fund on account of a progress payment application for the percentage of work done, it shall pay each of its subcontractors the sum contained in said payment for the percentage of said subcontractor's work, less the same amount retained therefrom by the Fund under the terms of the Contract Documents or in consequence of any legal proceedings or statutory liens, and less any amounts due the Contractor under the subcontract for work not performed or not properly or timely performed by the subcontractor. In the event any subcontractor is not paid by the Contractor, the former should immediately notify the Fund of such fact.

(7) The Contractor shall execute with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors a written agreement which shall bind the latter to the terms and provisions of this Contract insofar as such terms and provisions are applicable to the work to be performed by such subcontractors. The Contractor shall require all subcontractors and sub-subcontractors to promptly, upon request, file with the Consultant and the Fund a conforming copy of such agreements, from which the price and terms of payment may be deleted.

(8) If for sufficient reason, at any time during the progress of the work to be performed hereunder, the Consultant determines that any subcontractor or subcontractor is incompetent, careless, or uncooperative, the Consultant will notify the Contractor accordingly and immediate steps will be taken by the Contractor for cancellation of such subcontract or sub-subcontract. Such termination, however, shall not give rise to any claim by the Contractor or by such subcontractor or sub-subcontractor for loss of prospective profits on work unperformed and/or work unfurnished and a provision to that effect shall be contained in all subcontracts and sub-subcontracts.

(9) No provisions of this Contract shall create or be construed as creating any contractual relation between the Fund and any subcontractor or sub-subcontractor or with any person, firm, or corporation employed by, contracted with or whose services are utilized by the Contractor.

**Section 2.19 Shop Drawings and Samples**

(1) The Contractor in accordance with the approved Shop Drawing and Sample schedule and with such promptness and in such sequence as to cause no delay in the work, shall submit for the Consultant's approval all Shop Drawings and Samples called for under the Contract or requested by the Consultant.

(2) Shop Drawings shall establish the actual detail of the work, indicate proper relation to adjoining work, amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

(3) All Shop Drawings and Samples shall be thoroughly checked by the Contractor for compliance with the Contract Documents before submitting them to the Consultant for approval and all Shop Drawings shall bear the Contractor's recommendation for approval. Any Shop Drawings submitted without this stamp of approval and certification, and Shop Drawings which, in the Consultant's opinion, are incomplete, contain numerous errors or have not been checked or only checked superficially, will be returned unchecked by the Consultant for resubmission by the Contractor. In checking Shop Drawings, the Contractor shall verify all dimensions and field conditions and shall check and coordinate the Shop Drawings of any section or trade with the requirements of all other sections or trades whose work is related thereto, as required for proper and complete installation of the work.

(4) Samples must be of sufficient size or number to show the quality, type, range of color, finish and texture of the material. Each Sample shall be properly labeled to show the nature of the material, trade name of manufacturer, name and location of the work where the material represented by the Sample is to be used and the name of the Contractor submitting the Sample. Transportation charges to the Consultant must be prepaid on Samples forwarded to it.

(5) Shop Drawings and Samples, submitted by the Contractor in accordance with the approved Shop Drawing and Sample schedule, will be reviewed by the Consultant within fifteen (15) working days and if satisfactory will be approved. A Shop Drawing, when approved, will be returned to the Contractor. If not satisfactory, the Drawings and Samples will be appropriately marked and returned to the Contractor for correction thereof, in which event the Contractor shall resubmit to the Consultant a corrected copy of the Shop Drawing or a new Sample, as the case may be. The Contractor shall make any correction required by the Consultant and shall appropriately note any changes or revisions on the Shop Drawing, dated to correspond with the date of the Consultant's request for the change. Upon approval of the Shop Drawing by the Consultant, the Contractor shall promptly furnish to the Consultant as many copies thereof as the Consultant may reasonably request.

(6) At the time of submission of a Shop Drawing or Sample, the Contractor shall inform the Consultant and the Fund in writing of any deviation in the Shop Drawing or Sample from the requirements of the Contract Documents. Unless such deviation is specifically noted
by the Contractor with a notation that such deviation will result in extra work for which the Contractor requests payment, the Contractor shall be deemed to have waived any claim for extra work, additional compensation or payment or an extension of time with respect to all work shown on, described in or related to the Shop Drawing or Sample.

(7) The Consultant's approval of Shop Drawings or Samples is for design only and is not a complete check on the method of assembly, erection or construction. Approval shall in no way be construed as: (a) permitting any departure whatsoever from the Contract Documents, except where the Contractor, in accordance with the provisions of paragraph 6 of this Section, has previously notified the Fund and the Consultant of such departure; (b) relieving the Contractor of full responsibility for any error in quality of materials, details, dimensions, omissions or otherwise that may exist; (c) relieving the Contractor of full responsibility for adequate field connections, erection techniques, bracing or deficiencies in strength; (d) relieving the Contractor of full responsibility for satisfactory performance of all work and coordination with the work of all subcontractors and other contractors; or (e) permitting departure from additional details or instructions previously furnished by the Consultant.

(8) No work requiring a Shop Drawing or Sample shall be commenced until a Shop Drawing or Sample is approved by the Consultant and all such work shall be: (a) in accordance with the approved Shop Drawing or provided the latter conforms in all respects to the Contract Documents or to such deviations as may have been previously noted by the Contractor in accordance with the provisions of paragraph 6 of this Section; and (b) in conformance in all respects to the sample furnished to and approved by the Consultant and, unless otherwise specified, as new and of good quality.

Section 2.20 Equivalents - Approved Equal

A. Equivalents or Approvals - General

(1) The words "similar and equal to", or equal", "equivalent" and such other words of similar content and meaning shall for the purposes of this Contract be deemed to mean similar and equivalent to one of the named products. For the purposes of subdivisions A and B of this Section and for the purposes of the Bidding Documents, the word "products" shall be deemed to include the words "articles", "materials", "items", "equipment" and "methods". Whenever in the Contract Documents one or more products are specified, the words "similar and equal to" shall be deemed inserted.

(2) Whenever any product is specified in the Contract Documents by a reference to the name, trade name, make or catalog number of any manufacturer or supplier, the intent is not to limit competition, but to establish a standard of quality which the Consultant has determined is necessary for the Project. A Contractor may at its option use any product other than that specified in the Contract Documents provided the same is approved by the Consultant in accordance with the procedures set forth in subdivision B of this Section. In all cases the Consultant shall be the sole judge as to whether a proposed product is to be approved and the Contractor shall have the burden of proving, at its own cost and expense, to the satisfaction of the Consultant, that the proposed product is similar and equal to the named product. In making such determination the Consultant may establish such objective and appearance criteria as it may deem proper that the proposed product shall meet in order for it to be approved.

(3) Nothing in the Contract Documents shall be construed as representing, expressly or implied, that the named product is available or that there is or there is not a product similar and equal to any of the named products and the Contractor shall have and make no claim by reason of the availability or lack of availability of the named product or of a product similar and equal to any named product.

(4) The Contractor shall have and make no claim for an extension of time or for damages by reason of the time taken by the Consultant in considering a product proposed by the Contractor or by reason of the failure of the Consultant to approve a product proposed by the Contractor.

(5) Requests for approval of proposed equivalents will be received by the Consultant only from the Contractor.

B. Equivalents or Approvals After Bidding

(1) Requests for approval of proposed equivalents will be considered by the Consultant after bidding only in the following cases: (a) the named product cannot be obtained by the Contractor because of strikes, lockouts, bankruptcies or discontinuance of manufacture and the Contractor makes a written request to the Consultant for consideration of the proposed equivalent within ten (10) calendar days of the date it ascertains it cannot obtain the named product; or (b) the proposed equivalent is superior, in the opinion of the Consultant, to the named product; or (c) the proposed equivalent, in the opinion of the Consultant, is equal to the named product and its use is to the advantage of the Fund, e.g., the Fund receives an equitable credit, acceptable to it, as a result of the estimated cost savings to the Contractor from the use of the proposed equivalent or
the Fund determines that the Contractor has not failed to act diligently in placing the necessary purchase orders and a savings in the time required for the completion of the construction of the Project should result from the use of the proposed equivalent; or (d) the proposed equivalent, in the opinion of the Consultant, is equal to the named product and less than ninety (90) calendar days have elapsed since the approval of the Office of the State Comptroller.

(2) Where the Consultant pursuant to the provisions of this subdivision approves a product proposed by a Contractor and such proposed product requires a revision or redesign of any part of the work covered by this Contract, all such revision and redesign and all new Drawings and details required therefor shall be subject to the approval of the Consultant and shall be provided by the Contractor at its own cost and expense.

(3) Where the Consultant pursuant to the provisions of this Section approves a product proposed by a Contractor and such proposed product requires a different quantity and/or arrangement of duct work, piping, wiring, conduit or any other part of the work from that specified, detailed or indicated in the Contract Documents, the Contractor shall provide the same at its own cost and expense.

Section 2.21 Patents, Trademarks and Copyrights

The Contractor acknowledges that the Contract consideration includes all royalties, license fees and costs arising from patents or trademarks in any way involved in the work; provided, however, that the Contract consideration shall not be deemed to have included therein any royalty, license fee or cost arising from a patent or trademark for a design prepared by the Consultant and the Contractor shall have no liability in connection therewith. Where the Contractor is required or desires to use any product, device, material or process covered by patent or trademark, the Contractor shall indemnify and save harmless the Fund from any and all claims, actions, causes of action or demands, for infringement by reason of the use of such patented product, device, material or process, and shall indemnify the Fund from any cost, liability, damage and expense, including reasonable attorneys' fees and court costs, which it may be obligated to incur or pay by reason of any claim or infringement at anytime both before or after the Fund's final acceptance of all the work to be performed under the Contract.

Section 2.22 Possession Prior to Completion

If before the final completion of all the work it shall be deemed advisable or necessary by the Fund to take over, use, occupy or operate any part of the completed or partly completed work or to place or install therein equipment and furnishings, the Fund, upon reasonable written notice to the Contractor, shall have the right to so do and the Contractor will not in any way interfere therewith or object to the same. Such action by the Fund shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract Documents and the Contractor acknowledges that such action by the Fund does not in any way evidence the completion of the work or any part thereof or in any way signify the Fund's acceptance of the work or any part thereof; provided however, that the period for the Contractor's warranties and guarantees under the Contract, for the work so occupied or operated shall be deemed to commence on the date said work is occupied or operated. The Contractor agrees to continue the performance of all work covered by the Contract in a manner which will not unreasonably interfere with such takeover or use, occupancy, operation, placement or installation.

Section 2.23 Completion and Acceptance

(1) Partial Completion and Acceptance

If before the final completion of all the work any portion of the permanent construction has been satisfactorily completed and the same will be immediately useful to the Fund, the latter may, by written notice, advise the Contractor that it accepts such portion of the work. Such action by the Fund shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract with respect to any work not so completed and accepted.

(2) Substantial Completion

When all the work covered by the Contract is substantially completed, i.e., has reached such point of completion that the Project can be fully occupied and used for the purposes for which it was intended, the Contractor shall give written notice thereof to the Fund and the Consultant. The latter will then promptly make an inspection of the work and, if they shall determine that all the work is substantially completed, they shall so advise the Contractor. Such action shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract with respect to any uncompleted (including untested or deferred work), unaccepted or corrective work or in any way affect, limit or preclude the issuance by the Consultant, from time to time thereafter, of “Punch Lists”, i.e., lists of uncompleted or corrective work which the Contractor is to promptly complete and/or correct.

(3) Full Completion and Acceptance

After the completion of all the work the Contractor shall give written notice to the Fund and the Consultant that
all the work is ready for inspection and final acceptance. The Fund and the Consultant shall promptly make such inspection and, if they determine that all the work has been satisfactorily completed, the Fund shall thereupon by written notice advise the Contractor that it accepts such work.

Section 2.24 Record Drawings

(1) Prior to acceptance by the Fund of all work covered by the Contract, the Contractor shall furnish to the Consultant one (1) set of current Contract Drawings on which the Contractor has recorded, using colored pencil, in a neat and workmanlike manner, all instances where actual field construction differs from work as indicated on the Contract Drawings. These "Record" Drawings shall show the following information: (a) all significant changes in plans, sections, elevations and details, such as shifts in location of walls, doors, windows, stairs and the like made during construction; (b) all significant changes in foundations, columns, beams, openings, concrete reinforcing, lintels, concealed anchorages and "knock-out" panels made during construction; (c) final location of electric panels, final arrangement of electric circuits and any significant changes made in electrical design as a result of Change Orders or job conditions; (d) final location and arrangement of all mechanical equipment and major concealed plumbing, including, but not limited to, supply and circulating mains, vent stacks, sanitary and storm water drainage; and (e) final location and arrangement of all underground utilities, connections to building and/or rerouting of existing utilities, including, but not limited to, sanitary, storm, heating, electric, signal, gas, water and telephone.

(2) Shop Drawings shall not be acceptable as "Record" Drawings.

Section 2.25 Guarantees

(1) The Contractor, at the convenience of the Fund, shall remove, replace and/or repair at its own cost and expense any defects in workmanship, materials, ratings, capacities or characteristics occurring in or to the work covered by the Contract within one (1) year or within such longer period as may otherwise be provided in the Contract, the period of such guarantee to commence with the Fund's final acceptance of all work covered under the Contract or at such other date or dates as the Fund may specify prior to that time, and the Contractor, upon demand, shall pay for all damage to all other work resulting from such defects and all expenses necessary to remove, replace and/or repair such other work which may be damaged in removing, replacing or repairing the said defects. The obligations of the Contractor under the provisions of this paragraph or any other guarantee provisions of the Contract Documents are not limited to the monies retained by the Fund under the Contract.

(2) Unless such removal, replacement and/or repair shall be performed by the Contractor within ten (10) working days after it receives written notice from the Fund specifying such defect, or if such defect is of such a nature that it cannot be completely removed, repaired and/or replaced within said ten (10) day period and the Contractor shall not have diligently commenced removing, repairing and/or replacing such defect within said ten (10) day period and shall not thereafter with reasonable diligence and in good faith proceed to do such work, the Fund may employ such other person, firm or corporation as it may choose to perform such work, removal, replacement and/or repair and the Contractor agrees, upon demand, to pay to the Fund all amounts which it expends for such work.

Section 2.26 Default of Contractor

(1) In addition to those instances specifically referred to in other Sections hereof, the Fund shall have the right to declare the Contractor in default of the whole or any part of the work if:
   a. The Contractor becomes insolvent; or if
   b. The Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if
   c. A voluntary or involuntary petition in bankruptcy is filed by or against the Contractor; or if
   d. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if
   e. The Contractor fails to commence work when notified to do so by the Consultant; or if
   f. The Contractor shall abandon the work; or if
   g. The Contractor shall refuse to proceed with the work when and as directed by the Consultant; or if
   h. The Contractor shall without just cause reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the Fund, to complete the work in accordance with the approved time progress schedule, and shall fail or refuse to sufficiently increase such working force when ordered to do so by the Consultant; or if
   i. The Contractor shall sublet, assign, transfer convey, or otherwise dispose of the Contract other than as herein specified; or if
j. The Fund shall be of the opinion that 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

k. The Fund shall be of the opinion that the work cannot be completed within the time herein provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Fund’s opinion, attributable to conditions within the Contractor’s control; or if

l. The work is not completed within the time herein provided therefor or within the time to which the Contractor may be entitled to have such completion extended; or if

m. The Fund shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if

n. The Fund shall be of the opinion that the Contractor is not or has not been executing the Contract in good faith and in accordance with its terms.

(2) Before the Fund shall exercise its right to declare the Contractor in default by reason of the conditions set forth in the above items a, e, f, g, h, i, k, l, m and n, it shall give the Contractor three (3) working days’ notice of its intention to declare the Contractor in default and unless, within such three (3) day period, the Contractor shall make arrangements, satisfactory to the Fund, to correct and/or eliminate the conditions set forth in the Fund’s aforesaid notice, the Contractor may be declared in default at the expiration of such three (3) day period or at the expiration of such longer period of time as the Fund may determine.

(3) The right to declare in default for any of the grounds specified or referred to shall be exercised by the Fund sending the Contractor a written notice setting forth the ground or grounds upon which such default is declared. Upon receipt of notice that it has been declared in default, the Contractor shall immediately discontinue all further operations under the Contract and shall immediately quit the site, leaving untouched all plant, materials, equipment, tools and supplies then on site.

(4) The Fund, after declaring the Contractor in default, may then have the work completed by such means and in such manner, by contract, with or without public letting, or otherwise, as it may deem advisable, utilizing for such purpose such of the Contractor’s plant, materials, equipment, tools and supplies remaining on the site, and also such subcontractors as it may deem advisable, or it may call upon the Contractor’s surety at its own expense to do so.

(5) In the event that the Fund declared the Contractor in default of the work or any part of the work, the Contractor, in addition to any other liability to the Fund hereunder or otherwise provided for or allowed by law, shall be liable to the Fund for any costs it incurs for additional architectural and engineering services necessary, in its opinion, because of the default and the total amount of liquidated damages from the date when the work should have been completed by the Contractor in accordance with terms hereof to the date of actual completion of the work, both of which items shall be considered as expenses incurred by the Fund in completing the work and the amount of which may be charged against and deducted out of such monies as would have been payable to the Contractor or its surety if the work had been completed without a default.

(6) If the Fund completes the work, the Consultant shall issue a certificate stating the expenses incurred in such completion, including the cost of reletting. Such certificate shall be final, binding and conclusive upon the Contractor, its surety, and any person claiming under or through the Contractor, as to the amount thereof.

(7) The expense of such completion, as so certified by the Consultant, shall be charged against and deducted out of such monies as would have been payable to the Contractor if it had completed the work; the balance of such monies, if any, subject to the other provisions of the Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion, so certified by the Consultant, exceed the total sum which would have been payable under the Contract if the same had been completed by the Contractor, any such excess shall be paid by the Contractor to the Fund upon demand.

(8) In the event the Fund shall determine to complete the work without calling upon the Contractor’s surety to do so, the Contractor shall not be entitled, from and after the effective date of the declaration of the default, to receive any further payment under the Contract until the said work shall be wholly completed and accepted by the Fund.

(9) In case the Fund shall declare the Contractor in default as to a part of the work only, the Contractor shall discontinue such part, shall continue performing the remainder of the work in strict conformity with the terms
of the Contract, and shall in no way hinder or interfere with any other contractors or persons whom the Fund may engage to complete the work as to which the Contractor was declared in default.

(10) The provisions relating to declaring the Contractor in default as to the entire work shall be equally applicable to a declaration of partial default, except that the Fund shall be entitled to utilize for completion of the part of the work as to which the Contractor was declared in default only such plant, materials, equipment, tools and supplies as had been previously used by the Contractor on such part.

(11) In completing the whole or any part of the work, the Consultant and the Fund shall have the power to depart from, change or vary the terms and provisions of the Contract; provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variations, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Consultant’s certificate of the cost of completion, nor shall it constitute a defense to any action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for its default.

(12) The provisions of this Section shall be in addition to any and all other legal or equitable remedies provided by this Agreement and otherwise applicable by law.

Section 2.27 Termination for Convenience

(1) The performance of work under this Contract may be terminated by the Fund, in whole or in part, whenever the Fund shall determine that such termination is in the best interest of the Fund. Any such termination shall be effectuated by a notice in writing to the Contractor specifying the date upon which such termination shall become effective and the extent to which performance of the Contract shall be terminated. Such termination shall be effective on the date and to the extent specified in said notice.

(2) Upon receipt of a notice of termination, and except as otherwise directed in writing by the Fund, the Contractor shall:

a. Discontinue all work and the placing of all orders for materials and facilities otherwise required for the performance thereof,

b. Cancel all existing orders and subcontracts to the extent such orders and subcontracts relate to the performance of work terminated by the notice of termination;

c. Take such action as may be necessary to secure to the Fund the benefits of any rights of the Contractor under orders or subcontracts which relate to the performance of work terminated by the notice of termination, including, but not limited to, the assignment to the Fund, in the manner and to the extent directed by the Fund, all the right, title and interest of the Contractor under the orders or subcontracts so terminated and cancelled. In the event of such assignment, the Fund shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination and cancellation of such orders and subcontracts;

d. Transfer title and deliver to the Fund, in accordance with the direction of the Fund, all materials, supplies, work in process, facilities, equipment, machines or tools produced as a part of or acquired by the Contractor in connection with the work terminated by said notice, and all plans, Drawings, Working Drawings, sketches, Specifications and Information for use in connection therewith; provided, however, that the Contractor may retain any of the foregoing if it so elects and foregoes reimbursement therefor;

e. Take such action as may be necessary or as the Consultant or the Fund may prescribe for the protection and preservation of all property in the possession or control of the Contractor in which the Fund, under the provisions of the Contract, has or may acquire an interest.

(3) Notwithstanding the foregoing, should the notice of termination relate to only a portion of the work covered by the Contract, the Contractor will proceed with the completion of such portions of the work as are not terminated.

(4) The Fund will pay and the Contractor shall accept, in full consideration for the performance and completion of the portions of the work as are not terminated, a sum calculated by determining the percentage the portions of the work not terminated bear to the total amount of the work covered by the Contract, and by multiplying the Contract consideration by such percentage - the product thereof being the amount to be paid to the Contractor. The Fund shall determine the amount of such consideration in accordance with the foregoing.

(5) Upon compliance by the Contractor with the foregoing provisions of this Section and subject to deductions for payments previously made, the Fund, for
the portions of the work terminated, shall compensate the Contractor as follows:

a. By reimbursing the Contractor for actual expenditures made with respect to such work, including expenditures made in connection with any portion thereof which may have been completed prior to termination, as well as expenditures made after termination in completing those portions of the work covered by the Contract which the Contractor may have been required by the notice of termination to complete. The Fund shall determine the allowability and amount of such expenditures.

b. By reimbursing the Contractor for all actual expenditures made, with the prior written approval of the Fund or pursuant to a court judgment, in settling or discharging any outstanding contractual obligations or commitments incurred or entered into by the Contractor in good faith with respect to the Contract and resulting from the termination thereof.

c. By reimbursing the Contractor for all actual expenditures made after the effective date of the notice of termination resulting from or caused by the Contractor taking necessary action or action prescribed by the Consultant or the Fund for the protection and preservation of all property in the possession or control of the Contractor in which the Fund, under the provisions of the Contract, has, or may acquire an interest.

d. By paying the Contractor a markup, which is to be calculated in the same manner as that provided for in subdivision c of paragraph (1) of Section 4.02 for extra work, on the foregoing expenditures, which markup is to cover the Contractor’s overhead and profit; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, said markup shall be reduced by one-third.

(6) The sum of all amounts payable under this Section, plus the sum of all amounts previously paid by the Fund under the provisions of the Contract, shall not exceed the amount of the Contract consideration. In no event shall the Contractor be entitled to any payment for loss of anticipated profits on uncompleted work and the Fund shall not be liable for same.

(7) Termination by the Fund under the provisions of this Section shall be without prejudice to any claims or rights which the Fund may have against the Contractor.

(8) Notwithstanding the foregoing, where the Contractor and the Consultant can agree upon another method of determining the amount of the consideration to be paid to the Contractor under the provisions of this Section, such method, subject to the approval of the Fund, may, at the option of the Fund, be substituted for the method set forth above.
Article III
Time of Performance

Section 3.01 Commencement, Prosecution and Completion of Work

(1) The Contractor agrees that it will begin the work herein embraced within ten (10) calendar days after receipt of approval of the Office of the State Comptroller, unless the Fund consents, in writing, to begin at a different date, and that it will prosecute the same with such diligence that all work covered by the Contract shall be entirely completed and performed on or before the time specified on page A-1 of the Agreement.

(2) The Contractor further agrees that time is of the essence in this Contract and that the work shall be prosecuted in such manner and with sufficient plant and forces to complete all the work by the specified completion date.

Section 3.02 Time Progress Schedule

(1) Within thirty (30) calendar days after receipt of the approval of the Office of the State Comptroller, the Contractor, unless otherwise directed by the Fund, shall submit to the Fund and the Consultant for their approval its proposed working plan and schedule for approval of proposed time schedule covering its first ninety (90) calendar days of operation. The working plan and schedule shall be in the form of suitable charts, diagrams or bar graphs and shall be based on the Contractor's logic and time estimates. Such plan and schedule shall be sufficiently detailed to show clearly, in sequence, all salient features of the work of each trade including: the anticipated time of commencement and completion of such work and the interrelationship between such work, submission of Shop Drawings and Samples for approval, approval of Shop Drawings and Samples, placing of orders of materials, fabrication and delivery of materials, installation and testing of materials, contiguous or related work under other contracts, and other items pertinent to the work.

(2) Within ninety (90) calendar days after receipt of the approval of the Office of the State Comptroller, the contractor, unless otherwise directed by the Fund, shall submit to the Fund and the Consultant for their approval its proposed working plan and schedule for all the work covered by the Contract. Said proposed working plan and schedule shall be prepared in accordance with the form and requirements set forth in the preceding paragraph.

(3) The aforesaid proposed working plan and schedule shall be revised by the Contractor until they are satisfactory to the Fund and the Consultant, and the same shall be periodically revised thereafter and submitted by the Contractor to the Fund and the Consultant for approval at such time or times as the Fund or the Consultant may request.

(4) The proposed working plan and schedule, including any revision or revisions thereof, when approved by both the Fund and the Consultant shall be known as the time progress schedule. The time progress schedule, as the same may be revised from time to time by the Contractor and approved by the Fund and the Consultant, shall be strictly adhered to by the Contractor.

(5) If through the fault of the Contractor or any subcontractor the Contractor shall fail to adhere to the time progress schedule, it must promptly adopt such other and additional means and methods of construction as will make up for the time lost and will assure completion in accordance with such schedule.

(6) The Fund and the Consultant's approval of the Contractor's time progress schedule or of its time, means and/or methods of construction, including any revisions thereof, and/or their failure to reject the same shall not relieve the Contractor of its obligation to accomplish the result required by the Contract, nor shall the exercise of such right to reject, create or give rise to any claim, action or cause of action, legal, equitable or otherwise, against the Consultant or the Fund.

Section 3.03 Time Schedule for Shop Drawings and Samples

(1) Within sixty (60) calendar days after the date specified for the commencement of the work, the Contractor, unless otherwise directed by the Consultant, shall submit to the latter for approval a proposed time schedule covering the preparation and submission of all Shop Drawings and Samples. The proposed schedule shall be revised by the Contractor until it is satisfactory to the Consultant and it shall be periodically revised thereafter and submitted by the Contractor to the Consultant for approval at such time or times as the Consultant may request.

(2) The aforesaid schedule as the same may be revised from time to time by the Contractor, after approval by the Consultant, shall be strictly adhered to by the Contractor.

Section 3.04 Notice of Conditions Causing Delay

(1) Within ten (10) working days after the commencement of any condition which is causing or may cause delay in completion, the Contractor must notify the Consultant and the Fund in writing of the effect, if any, of such condition upon the time progress
schedule, and must state why and in what respects, if any, the condition is causing or may cause such delay.

(2) Failure to strictly comply with this requirement may, in the discretion of the Fund, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension, or other condition.

Section 3.05 Extension of Time

(1) An extension or extensions of time for the completion of the work may be granted by the Fund subject to the provisions of this Section, but only upon written application therefor by the Contractor to the Fund and the Consultant.

(2) An application for an extension of time must set forth in detail the source and the nature of each alleged cause of delay in the completion of the work, the date upon which each such cause of delay began and ended and the number of days of delay attributable to each of such causes. It must be submitted prior to completion of the work.

(3) If such an application is made, the Contractor shall be entitled to an extension of time for delay in completion of the work caused solely: (a) by the acts or omissions of the Fund, its trustees, officers, agents or employees; or (b) by the acts or omissions of other contractors, not including subcontractors of the Contractor, on this Project; or (c) by unforeseeable supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes).

(4) The Contractor shall, however, be entitled to an extension of time for such causes only for the number of calendar days of delay which the Fund may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of this Section and Section 3.04. The Fund shall make such determination within ninety (90) calendar days after receipt of the Contractor’s application for an extension of time; provided, however, said application complies with the requirements of this Section.

(5) The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as determined by the Fund, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its subcontractors or material-men and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such an act, fault or omission.

(6) The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Fund.

(7) If the Contractor shall claim to have sustained any damages by reason of delays, extraordinary or otherwise, or hindrances which it claims to be due to any action, omission, direction or order by the Fund or the Consultant, the Contractor shall be entitled only to an extension of time as hereinabove provided and shall not have or assert any claim for prosecute any suit, action, cause of action or proceeding against the Fund based upon such delays or hindrances, unless such delays or hindrances were caused by the Fund’s bad faith or its willful, malicious, or grossly negligent conduct or unanticipated delays, or delays so unreasonable that they constitute an intentional abandonment of the contract by the Fund, or delays resulting from the Fund’s breach of a fundamental obligation of the contract.

Section 3.06 Contractor’s Progress Reports

After commencement of the work the Contractor shall furnish the Consultant with written monthly reports setting forth the condition and general progress of the work, the percent age of each part of the work that has been finished, those parts of the work which have been completed within the scheduled time and those parts of the work which have not been finished within the scheduled time, and the general progress of the work that is being performed away from the site and the approximate date when such work will be finished and delivered to the site.

Article IV Payment

Section 4.01 Compensation to Be Paid Contractor

The Fund shall pay to the Contractor and the latter shall accept as full and complete payment for the performance of this Contract, subject to additions or deductions as provided herein, the sum of dollars ($_______), which sum is the amount of the contract consideration.

Section 4.02 Value of Omitted and Extra Work

(1) The amount by which the Contract consideration is to be increased or decreased by any Change Order shall be determined by the Fund by one or more of the
following methods:

a. By applying the applicable price or prices set forth on the attached Schedule "I" of this Agreement or by applying a unit price agreed to by both parties. Subject to the provisions of Section 4.04, this method must be used if the Contract Documents contain applicable unit prices.

b. By estimating the fair and reasonable cost of: (i) labor, including all wages, required wage supplements and insurance required by law (workers’ compensation, social security, disability, unemployment, etc.) paid to or on behalf of foremen, workers and other employees below the rank of superintendent directly employed at the site of the Project; (ii) materials; and (iii) equipment, excluding hand tools, which, in the judgment of the Fund, would have been or will be employed exclusively and directly on the omitted or extra work, as the case may be; and, in the case of extra work, where the same is performed directly by the Contractor, by adding to the total of such estimated costs a sum equal to 15 percent thereof, but, where the extra work is performed by a subcontractor, by adding a sum equal to 15 percent of said costs for the benefit of such subcontractor, and by adding, for the benefit of the Contractor (not further allowance will be made where extra work is performed by the sub-subcontractor), an additional sum equal to 10 percent of the first $10,000 of the above estimated costs, including the subcontractor's percentage override, plus 5 percent of the sum of $100,000 of the total of said items plus 5 percent of any sum in excess of $100,000 of the total of said items. For the purposes of the aforesaid percentage override, the words "extra work" shall be deemed as a complete item of added, modified or changed work as described in the Consultant's written instructions to the Contractor. Such "extra work" may include the work of one or more trades and/or subcontractors or sub-subcontractors and shall include all labor, materials, plant, equipment, tools and all incidental and/or indirectly necessary, related, involved in or convenient to the successful completion of the extra work item. Where the Consultant's aforesaid written instructions to the Contractor involve both an increase and a reduction in similar or related work, the above percentage overrides will be applied only on the amount, if any, the cost of the increased work exceeds the cost of the reduced work.

All profit, overhead and expense of whatsoever kind and nature, other than those set forth above in items (i) through (iii), of the Contractor, its subcontractors and sub-subcontractors, are covered by the aforesaid percentage overrides and no additional payment therefor will be made by the Fund.

The Fund may make such cost estimate either before or after the extra work is completed by the Contractor.

c. By determining the actual cost of the extra work in the same manner as in the above subdivision b except that actual costs of the Contractor shall be utilized in lieu of estimated costs. The Fund shall have the option to utilize this method provided it notifies the Contractor of its intent to do so prior to the time the Contractor commences performance of such extra work.

(2) Irrespective of the method used or to be used by the Fund in determining the value of a Change Order, the Contractor, within fifteen (15) working days after a request for the same, must submit to the Fund and the Consultant a detailed breakdown of the Contractor's estimate of the value of the omitted and/or extra work.

(3) The “Blue Book” (published by Intertec Publishing) will be utilized exclusively for the equipment rental pricing. For the purposes of paragraph (1) hereof, the cost of equipment shall be determined, irrespective of the actual price for any rental or actual cost associated with such equipment as follows: for the first 40 hours of use by taking the monthly rate listed in the "Blue Book" and dividing the same by 176 hours to establish an hourly rate and then multiplying such hourly rate by the actual number of hours that the equipment was used. The Contractor will submit an actual rental invoice, or acceptable quotation from a bona fide equipment rental supplier for rented equipment when equipment is not owned by the Contractor. The equipment rental supplier cannot be an “affiliate” of the Contractor, nor in any way be related to the Contractor. If submitted invoices/quotations are acceptable to the Fund, the Contractor will be reimbursed the actual rental cost including sales tax and appropriate mark-up. If no listing of rates for an item of equipment is contained in the "Blue Book", the Fund shall determine the reasonable rate of rental of the particular item of equipment by such other means as it finds appropriate. The edition of the "Blue Book" to be used shall be that in effect on the date of the receipt of bids for this Contract. None of the provisions of the “Blue Book” shall be deemed referred to or included in this Contract excepting only the aforesaid monthly rates. To the cost of equipment as determined above, there is to be added the actual cost
of gasoline, oil, grease and maintenance required for operation of such equipment and, in the case of equipment utilized only for extra work when, in the opinion of the Consultant, suitable equipment therefor was not available on the site, the reasonable cost of transporting said equipment to and from the site. Notwithstanding the foregoing, if the Consultant should determine that the nature or size of the equipment used by the Contractor in connection with the extra work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Consultant to be suitable for the extra work, the cost of equipment will not be based upon the equipment used by the Contractor but instead will be based on the smallest or least elaborate equipment determined by the Consultant to have been suitable for the performance of the extra work.

(2) Unless otherwise specifically provided for in a Change Order, the compensation specified therein for extra work includes full payment for both the extra work covered thereby and for any damage or expense caused the Contractor by any delays to other work to be done under the Contract resulting from or on account of said extra work, and the Contractor waives all rights to any other compensation for said extra work, damage or expense.

Section 4.03 Adjustment for Bond and Insurance Premiums

Upon final acceptance of the work to be performed under this Contract, the Fund shall adjust the Contract consideration to reflect any changes in the cost of all required Bonds and liability and builder’s risk insurance premiums which the Contractor paid in connection with the extra work and would have had to若是 pay for on all omitted work. Unless such cost is agreed upon by the Fund and the Contractor, the Fund shall calculate and determine the amount of the adjustment in the Contract consideration by estimating such costs.

Section 4.04 Unit Prices

(1) Except as otherwise provided in the second paragraph of this Section, the unit prices, set forth on the attached Schedule “I” of this Agreement, will be binding upon both the Fund and the Contractor in determining the value of omitted and/or extra work, and, in the case of extra work, such unit prices shall be deemed to include all profit, overhead and expenses of whatsoever kind and nature of the Contractor, its subcontractors and sub-subcontractors, and the Contractor agrees that it shall make no claim for any profit, overhead, expense or percentage override in connection therewith.

(2) Where said Schedule “I” sets forth a unit price for added and/or deducted work, the Fund shall have the option, whenever it is found that the quantity of changed work varies by more than 15 percent from the quantity that is stated or that can be determined by the Contract Documents at the time of execution thereof, to accept or reject such unit price for the quantity that the changed work varies more than 15 percent from the stated or determinable quantity. Where a quantity is not specifically stated in the Contract Documents, the Fund’s determination of the amount of said quantity included in the Contract Documents shall determine the applicability of this paragraph. Where the Fund, pursuant to the foregoing provisions, exercises its aforesaid option, the amount of the increase or decrease in the Contract consideration for the quantity of work which varies by more than 15 percent from the stated or determinable quantity shall be determined in accordance with the provisions of Section 4.02 of the Agreement and there was no unit price therefor set forth in said Schedule “I”.

Section 4.05 Allowances

(1) The Contractor acknowledges that the Contract consideration includes the allowances set forth on the attached Schedule “II” and “III” of this Agreement and, except for quantitative and field order allowances, it agrees to cause the work covered thereby to be done by such contractors for such sums as the Fund may direct. Where cash allowances are provided, the allowances shall be deemed to include the purchase of the materials and/or equipment and the delivery of same to the job site. Unless otherwise specified in the Contract Documents, cash allowances do not include the proper installation of the materials and/or equipment or the connection for final utilities thereto; the cost of said installation and/or connection having been included in the amount of the Contract consideration.

(2) The Contractor acknowledges that the Contract consideration includes such sums for expenses and profit on account of cash allowances as it deems proper and that it shall make no claim for expenses or profit or any percentage override in addition thereto; said items having been included in the amount of the Contract consideration.

(3) In the event any of the cash allowances listed below are either higher or lower than the cost of having the work done in accordance herewith, the Contract consideration shall be adjusted to reflect such variance, the amount of said adjustment to be the difference between the amount of the allowance and the actual cost of performing the work covered thereby.

(4) When quantitative allowances are provided, progress payments thereof to the Contractor will be
based upon the applicable unit prices set forth on the attached Schedule "I" of the Agreement, subject, however, to the provisions of paragraph (2) of Section 4.04. In the event any of said quantitative allowances are more than or less than the actual quantity of work performed, the contract consideration shall be adjusted to reflect such variance, the amount of said adjustment to be determined in accordance with the provisions of Section 4.02 and Section 4.04 of the Agreement.

Section 4.05A Field Orders

When the Agreement contains a Field Order Allowance, the bid shall include the amount of such allowance. Said amount shall cover the cost of additional labor and materials for contingent activities within the scope of the Agreement as directed and described by the Fund in writing in a Field Order. The Field Order will include a description of the work and the method for determining the value of such work. The value of the work directed under this allowance will be determined by one or more of the provisions of Section 4.02. If the net cost(s) of all Field Orders issued are more or less than the specified amount of the allowance, the contract sum will be adjusted by Change Order.

Section 4.06 Deductions for Unperformed and/or Uncorrected Work

(1) Without prejudice to any other rights, remedies or claims of the Fund, in the event that the Contractor at any time fails or neglects to supply working forces and materials of the proper quantity and quality necessary in the opinion of the Consultant or the Fund, to comply with the approved time progress schedule, or fails in any respect to prosecute the work with promptness and diligence or causes by any action or omission the stoppage or delay of or interference with the work of any other contractor having a contract with the Fund, or fails in the performance of any obligations and responsibilities under this Contract, then, and in that event, the Fund, acting itself or through the Consultant, may, upon three (3) working days notice to the Contractor, either itself or through the Consultant, shall not remedy or correct the same. In such event, however, the amount of the Contract consideration shall be decreased by an amount, determined by the Fund, which is equal to the difference in value of the work as performed by the Contractor and the value of the work had it been satisfactorily performed in accordance with the Contract or which is equal to the cost of performing the corrective work, whichever shall be the higher amount.

Section 4.07 Liquidated Damages

In the event that the Contractor shall fail to substantially complete all the work within the time fixed for such completion on page A-1, or within the time to which such completion may have been extended, or in the event that the Contractor abandons the work and the same is not substantially completed within the aforesaid time for such contract, the Contractor must pay to the Fund as damages for each calendar day of delay in completing the work, the amount set forth on page A-1. In view of the difficulty of accurately ascertaining the loss which the Fund will suffer by reason of delay in completing the work hereunder, said sum is hereby fixed and agreed as liquidated damages which the Fund will suffer by reason of such delay and not as a penalty. The Fund may deduct and retain out of the monies which may become due hereunder to the Contractor the amount of any such liquidated damages and, in case the amount which may become due to the Contractor under the provisions of the Contract may be less than the liquidated damages suffered by the Fund, the Contractor shall pay the difference, upon demand, to the Fund.

Section 4.08 Contract Breakdown

Prior to the submission of its first application for a progress payment, the Contractor shall present to the Fund and the Consultant for their approval a detailed schedule showing the breakdown of the Contract consideration. Such schedule must contain the amount estimated for each part of the work and quantity survey for each part of the work. It shall also list the estimated value of the Contractor's guarantee obligations under the provisions of the Contract Documents, which is hereby fixed at $5,000 or one-half of one percent (1/2%) of the Contract award amount, whichever is the lesser sum. Such schedule shall be revised by the Contractor until the same shall be satisfactory to the Fund and the Consultant and shall not be changed after the Fund and the Consultant have approved the same. The amounts set forth in the schedule will not be considered as fixing the basis for additions to or deductions from the Contract consideration.

Section 4.09 Prompt Payment Requirements
(1) For the purposes of Article XI-A of the State Finance Law, the Controller’s Office of the State University Construction Fund, whose mailing address is The State University Plaza, 353 Broadway, Albany, New York 12246, is the Fund’s designated payment office. Applications for payment must contain the approval of the Consultant before being submitted to the Fund.

(2) Whenever the Consultant’s approval of an application for payment is required under the Contract, the Consultant shall have fifteen (15) calendar days, after receipt of such application, to inspect the work before acting on the application.

(3) This Contract is subject to the approval of the Comptroller of the State of New York. Until such approval is given, the thirty (30) day period, referred to in Article XI-A of the State Finance Law for the payment of invoices without interest, shall not begin.

Section 4.10 Progress Payments

(1) Unless otherwise provided in the Contract, progress payments will be made as the work progresses upon applications submitted by the Contractor and approved by the Consultant and the Fund. Payment of such approved applications shall be made by the Fund within thirty (30) days after such approval has been given.

(2) The Fund shall make progress payments to the Contractor on the basis of such approved applications, an amount equal to 5 percent thereof plus an amount necessary, in the Fund’s judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. It shall reserve from each such payment and all of the work covered by the Contract has been completed.

(3) When the Fund and the Consultant have determined that all the work is substantially completed, or that a substantial portion of the permanent construction has been completed and accepted, the Fund shall make a progress payment to the Contractor, on the basis of an application submitted by the Contractor and approved by the Consultant and the Fund, which shall reduce the unpaid amount due to the Contractor under the terms of the Contract, including all monies retained by the Fund from previous progress payments to the Contractor, to an amount equal to two (2) times the cost, estimated by the Consultant, of performing, in accordance with the Contract, all uncompleted, unaccepted and corrective work, plus an amount necessary, in the Fund’s judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. As the remaining items of work are satisfactorily completed or corrected, the Fund shall make progress payments to the Contractor, on the basis of applications submitted by the Contractor and approved by the Fund and the Consultant, covering said items of work less an amount necessary, in the Fund’s judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

Section 4.11 Applications for Progress Payments

The Contractor shall prepare all applications for progress payments for work performed, together with supporting data and computations as are deemed necessary by the Consultant to determine the accuracy of the application. The application for payment and all required supporting documentation shall be submitted on forms prescribed by the Fund. The Contractor shall include with such applications reports detailing actual payments to minority and women-owned businesses who participate on SUNY projects. Failure of the Contractor to complete an application for progress payments, or lack of complete and accurate supporting data, shall be a sufficient reason for withholding payment until such omissions or errors are rectified. Unless otherwise directed, such applications, signed and certified as correct by the Contractor, shall be delivered by the Contractor to the Consultant once each month showing the total value of work completed and in place on the last day of the payment period covered by the application.

Section 4.12 Progress Payments for Materials Delivered to Site

(1) Progress payments made in accordance with Section 4.10 shall include a payment for materials and equipment to be furnished and installed under the Contract, after such materials and equipment have been delivered and accepted at the site of the work.

(2) Materials and equipment for which such progress payment has been made shall not be removed from the site, shall be stored until incorporated into the work in a location approved by the Consultant and shall be adequately protected from fire, theft and vandalism, the effects of the elements and any other damage whatsoever, and shall at all times be available for inspection by the Consultant and the Fund.

Section 4.13 Transfer of Title to Materials Delivered to Site

Title to all supplies and materials to be furnished or provided by the Contractor to the Fund pursuant to the provisions of the Contract Documents shall immediately vest in and become the sole property of the Fund upon delivery of such supplies and materials to the site. Notwithstanding such transfer of title, the Contractor shall have the full continuing responsibility to install such materials and supplies, protect them, maintain
them in proper condition and forthwith repair, replace and make good any damage thereto without cost to the Fund until such time as the work covered by the Contract is fully accepted by the Fund. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract. In the event that, after title has passed to the Fund, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

Section 4.14 Progress Payments for Materials Stored Off Site

(1) Progress payments made in accordance with Section 4.10 shall include a payment for materials and equipment which are in short and/or critical supply or have been specially fabricated for the Project. Materials and equipment, for which a progress payment is made pursuant to the preceding sentence, shall be stored by the Contractor, after fabrication, until such time as their delivery to the site is required, at a facility and location approved by the Consultant; shall be adequately protected from fire, theft and vandalism, the effects of the elements and any other damage whatsoever; and shall at all times be available for inspection by the Consultant and the Fund. No progress payment shall, however, be made for said materials and equipment until:

a. The Contractor furnishes to the Fund a list of sale listing quantity and costs of said materials and equipment f.o.b. point of origin;

b. The Consultant shall have inspected said materials and equipment and recommended payment therefor; and

c. The Contractor furnishes to the Fund a builder's risk insurance policy, with the broad form extended coverage endorsement, for said materials and equipment, in an amount equal to 100 percent of the value thereof, which policy shall be maintained, at the sole cost and expense of the Contractor, until said materials and equipment have been incorporated into the Project. The said insurance policy shall contain a provision that the loss, if any, is to be made adjustable with and payable to the Fund as trustee for the insured, i.e., the Fund and the Contractor, and a provision that it shall not be changed or cancelled and that it will be automatically renewed upon expiration and continued in force unless the Fund is given fifteen (15) days' written notice to the contrary.

(2) Materials and equipment for which a progress payment has been made by the Fund pursuant to this Section shall be, become and remain the sole property of the Fund; provided, however, that the Contractor shall have the full continuing responsibility to install such materials and equipment, to deliver it to the site, to protect it, to maintain it in proper condition and to forthwith repair, replace and make good any damage thereto without cost to the Fund until such time as the work covered by the Contract is fully accepted by the Fund. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract.

Section 4.15 Withholding of Progress Payments

Notwithstanding anything contained in the Contract to the contrary, the Fund may withhold payment of all or any part of a progress, final or guarantee payment, in such an amount as it may deem proper to enforce the provisions of the Contract and to satisfy the claims of third parties, unless:

a. The Fund shall learn of any claim, of whatsoever nature or kind, against the Fund or the Contractor, which in any way arises or is alleged to arise out of or as a result of or in connection with the performance by the Contractor of the work covered by the Contract or out of or in connection with the Contractor's operations or performance at or in the vicinity of the construction site, that, in the opinion of the Fund, may not be adequately covered by insurance.

If an action on such claim is timely commenced and the liability of the Fund and/or the Contractor shall have been established therein by a final judgment of a court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the Fund shall pay such judgment or admitted claim out of the monies retained by it under the provisions of the Contract and return the balance, if any, without interest, to the Contractor.

The Fund may withhold from the Contractor any payments retained by it until such time as all such claims are either satisfied or barred by law from being presented. At such time the Fund, upon written demand by the Contractor, shall return to the Contractor the amount so withheld, without interest.

b. The Contractor has not complied with any lawful or proper direction of the Consultant or the Fund or their representatives concerning the work covered by the Contract or the performance of the Contract or the production
of records as required under the provisions of the Contract.

c. There exists any of the conditions, listed in Section 2.26, which would allow the Fund to declare the Contractor in default of the whole or any part of the work.

d. The Contractor is a foreign contractor and has not furnished satisfactory proof that all taxes due by such Contractor under the provisions of the Tax Law have been paid. The Certificate of the New York State Tax Commission to the effect that all such taxes have been paid shall be conclusive proof of the payment of such taxes. The term "foreign contractor" as used herein means, in the case of an individual, a person who is not a resident of the State of New York; in the case of a partnership, one having one or more partners not a resident of the State; and in the case of a corporation, one not organized under the laws of the State of New York.

e. The Contractor, upon request of the Fund at any time after the initial progress payment by the Fund to the Contractor, fails to furnish the Fund with such documentary evidence that the Fund may deem necessary to prove to it that the material and labor paid for by the Fund under previous applications for payment submitted have been paid for by the Contractor and that there are no outstanding claims for liens in connection therewith or fails to satisfy the Fund that the Contractor, with good cause, has sufficiently provided for the payment and/or satisfaction of claims for said material and labor.

Section 4.16  Lien Law

The attention of the Contractor is specifically called to the provisions of the Lien Law of the State of New York, wherein funds received by a Contractor for a public improvement are declared to constitute trust funds in the hands of such Contractor to be applied first to the payment of certain claims.

Section 4.17  Substitution of Securities for Retainage

Anytime after 50 percent of all the work has been completed, the Fund, if the progress and performance of the work is satisfactory to it, on request of the Contractor, will allow the Contractor to withdraw up to 50 percent of the aforesaid amount retained by the Fund by depositing with the Comptroller of the State of New York government securities, of the type and kind specified in Section 139 of the State Finance Law, having a market value not exceeding par, at the time of deposit, equal to the amount so withdrawn. The Comptroller of the State of New York shall, from time to time, collect all interest or income on the obligations so deposited, and shall pay the same, when and as collected, to the Contractor. If the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the Contractor; provided, however, that the Contractor shall not be entitled to interest or coupons or income on any of the deposited securities, the proceeds of which have or will be used or applied by the Fund. In the event that the Contractor does not, in accordance with the terms and provisions of the Contract, comply with and fulfill all of its obligations and responsibilities thereunder, the Comptroller of the State of New York shall have the right to sell, assign, transfer or otherwise dispose of the aforesaid securities and the Fund shall have the right to use and apply any part of the monies obtained by the Comptroller of the State of New York from such a sale, assignment, transfer or disposition or from the collection of interest or income from said securities to the performance and fulfillment of said obligations and responsibilities. Notwithstanding the foregoing, when the Fund makes a payment under Section 4.10 (3) of the Agreement, it will return to the Contractor, as part of such payment, its substituted securities, and thereafter all Retention of the Fund shall be in funds and not in substituted securities.

Section 4.18  Final Payment

Upon acceptance of all the work, except for the Contractor's guarantee obligations under Section 2.25 of the Agreement and the Contractor's guarantee obligations under any provision of the Specifications, the Contractor shall prepare and submit to the Fund and the Consultant, for their approval, a final application for payment, which the Fund, within thirty (30) days after its approval of same, shall pay. Such application and payment shall be in an amount equal to 100 percent of the Contract consideration, excluding the Contractor's guarantee obligations, less:

a. All previous payments by the Fund to the Contractor;

b. All deductions authorized to be made by the Fund under the Contract; and

c. An amount necessary, in the Fund's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

Section 4.19  Acceptance of Final Payment

(1) The acceptance by the Contractor, or by any one claiming by or through it, of the final payment shall,
Section 4.20 Guarantee Payment

(1) Subject to the provisions of the second paragraph of this Section, at the expiration of one (1) year after the Fund has accepted all the work covered by the Contract, the Contractor shall prepare and submit to the Fund and the Consultant, for their approval, a guarantee application for payment, which the Fund, within thirty (30) days after its approval of same, shall pay. Such application and payment shall be in an amount equal to the monies retained by the Fund for the Contractor's guarantee obligations under this Agreement, less any monies deducted by the Fund under this Section. The Contractor shall not be entitled to any interest on the monies retained by the Fund pursuant to subdivision c of Section 4.18 of the Agreement.

(2) In the event the Contractor does not, in accordance with the terms and provisions of the Contract, complete all corrective work or comply with and fulfill its contractual obligations, the Fund may use and apply all or any part of the monies retained by it to have such work or obligations performed or fulfilled by a person, firm or corporation other than the Contractor. The obligations of the Contractor, under the terms and provisions of the Contract, shall not, however, be limited to the monies retained by the Fund pursuant to the provisions of the Contract.

(3) No payments may be made under this agreement for work completed more than 365 days after

{Insert Contract Closing Date}

Unless the date/duration listed on page A-1, is extended in writing by the Fund, and approved by OSC.

Section 4.21 Acceptance of Guarantee Payment

The acceptance by the Contractor or by anyone claiming by or through it, of the guarantee payment shall constitute and operate as a release to the Fund from any and all claims of any liability for anything theretofore done or furnished for or relating to or arising out of the work covered by the Contract and for any prior act, neglect or default on the part of the Fund or any of its trustees, officers, agents or employees in connection therewith.

(2) Should the Contractor refuse to accept the final payment as tendered by the Fund or should the Contractor refuse to execute the final application for payment without protest and without reserving any rights or claims against the Fund, it shall constitute a waiver of any right to interest on the amount of the payment so tendered and/or on the amount set forth in said final application for payment.

Section 4.22 Contractor Limited to Money Damages

Inasmuch as the Contractor can be compensated adequately by money damages for any breach of the Contract which may be committed by the Fund, the Contractor agrees that no default, act or omission of the Fund shall constitute a material breach of the Contract entitling the Contractor to rescind the same or to suspend or abandon performance thereof; and it hereby waives any and all rights and remedies to which it might otherwise be or become entitled to because of any wrongful act or omission of the Fund or its representatives, saving only its right to money damages.

Section 4.23 No Estoppel or Waiver

(1) The Fund shall not be precluded or estopped by any inspection, acceptance, application for payment or payment, final or otherwise, issued or made under the Contract or otherwise issued or made by it, the Consultant, or any trustee, officer, agent or employee of the Fund, from showing at any time the true amount and character of the work performed, or from showing that any such inspection, acceptance, application for payment or payment is incorrect or was improperly issued or made; and the Fund shall not be precluded or estopped, notwithstanding any such inspection, acceptance, application for payment or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with the Contract and any monies which may be paid to it or for its account in excess of those to which it is lawfully entitled.

(2) Neither the acceptance of all or any part of the work covered by the Contract; nor any payment therefor; nor any order or application for payment issued under the Contract or otherwise issued by the Fund, the Consultant, or any trustee, officer, agent or employee of the Fund; nor any permission or direction
to continue with the performance of the Contract before or after its specified completion date; nor any performance by the Fund of any of the Contractor's duties or obligations; nor any aid lent to the Contractor by the Fund in its performance of such duties or obligations; nor any delay or omission by the Fund to exercise any right or remedy accruing to it under the terms of the Contract or existing at law or in equity or by statute or otherwise; nor any other thing done or omitted to be done by the Fund, its trustees, officers, agents or employees; shall be deemed to be a release to the Contractor or its sureties from any obligations, liabilities or undertakings in connection with the Contract or the Performance Bond or a waiver of any provision of the Contract or of any rights or remedies to which the Fund may be entitled because of any breach thereof, excepting only a written instrument expressly providing for such release or waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Contract, because of any breach hereof, shall be deemed a waiver of any money damages to which the Fund may be entitled because of such breach. No waiver by the Fund of any breach of the Contract shall be deemed to be a waiver of any other or any subsequent breach.

Section 4.24 Limitation of Actions

(1) No action or proceeding shall be maintained by the Contractor, or anyone claiming under or through the Contractor, against the Fund, or its trustees, officers, agents or employees, upon any claim arising out of or based upon the Contract or any breach thereof or by reason of any act or omission or requirement of the Fund, or its trustees, officers, agents or employees, unless:

a. Such action or proceeding is instituted in the Supreme Court of the State of New York in and for the County of Albany.

b. The Contractor or the person claiming under or through it shall have strictly complied with all requirements relating to the giving of notices and information with respect to such claims; and

c. Such action or proceeding shall be commenced within one (1) year after the submission to the Fund of the final application for payment or, if the claim is based upon monies required to be retained for any period after the date of the final application for payment, such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract; or

d. If the Contract is terminated or the Contractor declared in default by the Fund, such action is commenced within six (6) months after the date of such termination or declaration of default by the Fund.

(2) Notwithstanding anything in the laws of the State of New York to the contrary, the Contractor, or anyone claiming under or through the Contractor, shall not be entitled to any additional time to begin anew any other action if an action commenced within the times herein specified is dismissed or discontinued for any reason whatsoever.

Article V Protection of Rights and Property

Section 5.01 Accidents and Accident Prevention

The Contractor shall at all times take reasonable precautions for the safety of persons engaged in the performance of the work. The Contractor shall comply fully with all applicable provisions of the laws of the State of New York and OSHA and with all valid rules and regulations thereunder. The Contractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Labor.

Section 5.02 Adjoining Property

The Contractor shall be required to protect all the adjoining property and to repair or replace any such properties damaged or destroyed by it, its employees or subcontractors through, by reason of or as a result of activities under, for or related to the Contract.

Section 5.03 Emergencies

(1) In case of an emergency which threatens loss or injury to persons or property, the Contractor will be allowed to act, without previous instructions from the Consultant or the Fund, in a diligent manner, to the extent required to avoid or limit such loss or injury, and it shall notify the Consultant and the Fund immediately thereafter of the action taken by it and of such emergency. Where the Contractor has not taken action but has notified the Consultant or the Fund of an emergency which threatens loss or injury to persons or property, it shall act in accordance with the instructions and/or authorization by the Consultant or the Fund.

(2) In the event that the Contractor performs extra work in accordance with the preceding paragraph, it will be compensated therefor in accordance with the provisions of Section 4.02.

Section 5.04 Fire Safety
Section 5.05  Risks Assumed by Contractor

(1) The Contractor solely assumes the following distinct several risks whether they arise from acts or omissions (whether negligent or not, and whether supervisory or otherwise) of the Contractor, of the Fund, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the work covered by the Contract, whether such risks are within or beyond the control of the Contractor and whether such risks involve a legal duty, primary or otherwise, imposed upon the Fund, the Dormitory Authority of the State of New York, the State of New York or the State University of New York, excepting only risks which arise from defects in maps, plans, designs or Specifications prepared, acquired or used by the Consultant or the Fund, from the negligence of the Fund, its agents or employees or from affirmative acts of the Fund, the Dormitory Authority of the State of New York, the State of New York or the State University of New York or their trustees, officers, agents or employees committed with intent to cause the loss, damage and injuries herein below set forth:

a. The risk of loss or damage, direct or indirect, to the work covered by the Contract or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Fund or by the Contractor or any subcontractor, material man or worker performing services or furnishing materials for the work covered hereunder. The Contractor shall bear such risk of loss or damage until the work covered by the Contract has been finally accepted by the Fund or until completion of removal of such plant, equipment, tools, materials or property from the construction site and the vicinity thereof, whichever event occurs last. In the event of such loss or damage, the Contractor shall forthwith repair, replace and/or make good any such loss or damage without cost to the Fund.

b. The risk of claims just or unjust, by third persons against the Contractor, the Fund, the Dormitory Authority of the State of New York, the State of New York, or the State University of New York on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising or alleged to arise out of or as a result of or in connection with the performance by the Contractor of the work covered by the Contract (whether actually caused by or resulting from the performance of the Contract) or out of or in connection with the Contractor's operations or presence at or in the vicinity of the construction site. The Contractor shall bear such risk for all such deaths, injuries, damages or losses sustained or alleged to have been sustained prior to the final acceptance by the Fund of all work covered by the Contract. The Contractor shall also bear the risk of claims for wrongful death occurring subsequent to said final acceptance provided such death is caused, contributed to or is a consequence of bodily injuries sustained or alleged to have been sustained prior to said final acceptance.

(2) The Contractor shall indemnify and save harmless the Fund, the Dormitory Authority of the State of New York, the State of New York and the State University of New York, their trustees, officers, agents or employees against all claims described above and for all costs and expenses incurred by them in the defense, settlement or satisfaction thereof, including attorneys' fees and court costs. If so directed, the Contractor shall at its own expense defend against such claims, in which event it shall not, without obtaining express advance permission from Counsel of the Fund, raise any defense involving in any way jurisdiction of the tribunal over the Fund, governmental nature of the Fund or the
provisions of any statutes respecting suits against the Fund.

(3) Neither the Fund's final acceptance of the work to be performed hereunder nor the making of any payment shall release the Contractor from its obligations under this Section. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall not be deemed to limit the effect of the provision of this Section or to imply that it assumes or is responsible for only risks or claims of the type enumerated.

Section 5.06 Compensation and Liability Insurance

(1) The Contractor shall procure and maintain, at its own cost and expense, until final acceptance by the Fund of all the work covered by this Contract, the following kinds of insurance:

a. Workers' Compensation Insurance. A policy complying with the requirements of the laws of the State of New York.

b. General Liability and Property Damage Insurance. A standard general comprehensive liability insurance policy or a commercial general liability insurance policy issued to and covering the liability of the Contractor or any work and operations under this Contract, including, but not limited to, contractual and completed operations coverage. The coverage under such policy shall not be less than the following limits:

Bodily Injury and Property Damage Liability
$1,000,000 Each Occurrence
2,000,000 Aggregate

The aforesaid insurance requirements will be deemed met by the Contractor's procurement and maintenance of either of the aforesaid policies and, in addition thereto, an umbrella policy providing similar coverage; provided, however, that the total amount of insurance coverage is at least equal to the requirements above set forth.

c. Automobile Liability and Property Damage Insurance. A policy covering the use in connection with the work covered by the Contract Documents of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates.

The coverage under such policy shall not be less than the following limit:

Bodily Injury and Property Damage Liability
$1,000,000 Each Occurrence

(2) The aggregate insurance limit set forth above shall apply separately to each project for which a certificate
of insurance and/or policy is issued.

(3) Before commencing the performance of any work covered by the Contract, the Contractor shall furnish to the Fund a certificate or certificates in duplicate of the insurance required under the foregoing provisions. Such certificates shall be on a form prescribed by the Fund, shall list the various coverages and shall contain, in addition to any provisions hereinbefore required, a provision that the policy shall not be changed or cancelled and that it will be automatically renewed upon expiration and continued in force until final acceptance by the Fund of all the work covered by the Contract, unless the Fund is given fifteen (15) days’ written notice to the contrary. Upon request, the Contractor shall furnish the Fund with a certified copy of each policy.

(4) All insurance required to be procured and maintained as aforesaid must be procured from insurance companies approved by the Fund and authorized to do business in the State of New York.

(5) If at any time any of the above-required insurance policies should be cancelled, terminated or modified so that insurance is not in effect as above required, then, if the Fund shall so direct, the Contractor shall suspend performance of the work covered in the Contract. If the said work is so suspended, no extension of time shall be due on account thereof. If said work is not suspended, then the Fund may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor to the Fund.

Section 5.07 Builder’s Risk Insurance

(1) The Contractor shall procure and maintain, at its own cost and expense, until final acceptance of all work covered by this Contract or until the Project has been turned over for use by the State University of New York, whichever event occurs earlier, a builder’s risk insurance policy with fire, extended coverage, vandalism and malicious mischief coverage.

(2) The policy shall be in an amount equal to the Project’s insurable value, i.e., the Contract consideration less the cost of the Contractor’s Performance and Labor and Material Bonds; the cost of trees, shrubbery, lawn grass, plants and the maintenance of the same; the cost of demolition; the cost of excavation; the cost of foundations, piers or other supports which are below the undersurface of the lowest basement floor, or where there is no basement, which are below the surface of the ground, concrete and masonry work; the cost of underground flues, pipes or wiring; the cost of earthmoving, grading and the cost of paving, roads, walks, parking lots or athletic fields; and the cost of bridges, tunnels, dams, piers, wharves, docks, retaining walls and radio and/or television towers and antennas.

(3) The policy may contain a provision for a $500 deductible for each loss to a Project having an insurable value of less than $1,500,000 and a $1,000 deductible for each loss to a Project having an insurable value of $1,500,000 or more.

(4) The Fund, the Contractor and its subcontractors, as their interests may appear, shall be named as the parties insured under said policy.

(5) The Contractor shall have the sole responsibility to promptly report any loss to the insurer and/or its representatives and to furnish the latter with all necessary details relating to the occurrence of the loss and the amount thereof. The Fund, the Contractor and all subcontractors of the Contractor waive all rights, each against the others for damages caused by fire or other perils covered by insurance provided under the terms of this Section, except such rights as they may have to the proceeds of insurance received; provided, however, that this waiver shall not apply to any manufacturer, supplier or similar agent under any guarantee or warranty.

(6) The Contractor shall not violate or permit to be violated any condition of such policy and shall at all times satisfy the fire safety requirements of the Fund and the insurance company issuing the same.

(7) The procurement and maintenance of said policy shall in no way be construed or be deemed to relieve the Contractor from any of the obligations and risks imposed upon it by this Contract or to be a limitation on the nature or extent of such obligations and risks.

(8) Such policy shall contain a provision that it shall not be changed or cancelled and that it will be automatically renewed upon expiration and continue in force until final acceptance by the Fund of all the work covered by the Contract, unless the Fund is given fifteen (15) days’ written notice to the contrary. Before the Contractor shall be entitled to have any progress payment rendered on account of the work which is to be insured pursuant to this Section, it shall furnish to the Fund a certificate in duplicate of the insurance herein required. Such insurance must be procured from an insurance company approved by the Fund and authorized to do business in the State of New York.

Section 5.08 Effect of Procurement of Insurance

Neither the procurement nor the maintenance of any type of insurance by the Fund or the Contractor shall in any way be construed or be deemed to limit, discharge, waive or release the Contractor from any of the obligations and risks imposed upon it by the Contract or
to be a limitation on the nature or extent of such obligations and risks.

Section 5.09 No Third Party Rights

Nothing in the Contract shall create or give to third parties, except the Dormitory Authority of the State of New York, the State of New York and the State University of New York, any claim or right of action against the Contractor, the Consultant, the Fund, the Dormitory Authority of the State of New York, the State of New York or the State University of New York beyond such as may legally exist irrespective of the Contract.

Article VI
Affirmative Action

Section 6.01 Definitions

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

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

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

Section 6.02 Affirmative Action Policy Statement

(1) The Fund recognizes the need to take affirmative action to promote the employment of minority group members and women and to ensure that Minority and Women's Business Enterprises are given the opportunity to participate in the performance of its construction program. This opportunity for participation in our free enterprise system by socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy. Accordingly, it is the policy of the Fund to provide for participation of minorities and women on the Project.

(2) The Contractor acknowledges its understanding of the special policy herein stated and agrees to cooperate with the Fund in the implementation of this policy.

Section 6.03 Participation by Minority and Women's Business Enterprises (MWBEs)

The Contractor shall use good faith efforts to provide for meaningful participation by MWBEs in the work. Such good faith efforts shall include, but not be limited to, the following:

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

(2) Advertising in newspapers or publications within reasonable proximity to the Project.

(3) Making plans and specifications for prospective work available to MWBEs in sufficient time for review.

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

(5) Dividing the work to be subcontracted into smaller portions where technically feasible.

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

(7) Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate to ensure that the Contractor will meet its obligations hereunder.

(8) Waiving bonds from MWBEs and/or providing bonds and insurance for MWBEs, where appropriate in the Contractor's judgment.
(9) Insuring that provision is made to provide progress payments to MWBEs on a timely basis.

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

Section 6.04 Participation by Minority Persons and Women

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

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

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

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

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

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

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

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

(8) Validating all tests and other selection requirements.

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

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

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

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

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

Section 6.05 Equal Employment Opportunities

The Contractor agrees to comply with all applicable Federal, State and local civil rights and human rights laws with reference to equal employment opportunities and the provision of services.

Section 6.06 Goals for Minority and Women’s Business Enterprise Participation

(1) Campuses outside of NYC & Long Island: For all Contracts exceeding $100,000, the Contractor shall exert good faith efforts to achieve an 8 percent goal for Minority and a 4 percent goal for Women's Business Enterprise participation in the work.

a. The 8% goal for Minority Business Enterprise participation shall be applied as follows: a
maximum of 3% of the goal may be applied to purchases of materials, supplies and equipment from MBEs.

b. The 4% goal for Women’s Business Enterprise participation shall be applied as follows: a maximum of 2% of the goal may be applied to purchases of materials, supplies, and equipment from WBEs.

(2) Campuses within NYC & Long Island: For all Contracts exceeding $100,000, the Contractor shall exert good faith efforts to achieve a 10 percent goal for Minority and a 4 percent goal for Women’s Business Enterprise participation in the work.

a. The 10% goal for Minority Business Enterprise participation shall be applied as follows: a maximum of 3% of the goal may be applied to purchases of materials, supplies, and equipment from MBEs.

b. The 4% goal for Women’s Business Enterprise participation shall be applied as follows: a maximum of 2% of the goal may be applied to purchases of materials, supplies, and equipment from WBEs.

(2) The goal for MWBE participation in the conduct of the work is expressed as a percentage equal to the total dollar value of the work performed by MWBEs divided by the Contract consideration. Where the cost to the Contractor of a single item of equipment exceeds 30 percent of the total Contract consideration and where the Contractor has shown good faith efforts to obtain such equipment from MWBE manufacturers and suppliers, the cost of such equipment shall be deducted from the Contract consideration prior to computing the MWBE participation.

(3) The total dollar value of the work performed by MWBEs will be determined as: (a) the dollar value of the work subcontracted to MWBEs or (b) where the Contractor is a joint venture including one or more MWBEs as joint venturers -- the Contract value which is to accrue to the MWBE joint venturer(s) under the joint venture agreement.

Section 6.07 Reports and Records

(1) Except for Contracts not exceeding $100,000, the Contractor shall file with the Fund monthly reports regarding actions taken pursuant to this Article as well as a list of and value of subcontracts and supply contracts.

(2) The Contractor shall permit access to its books, records and accounts by the Fund for purposes of investigation to ascertain compliance with the provisions of this Article. The Contractor shall include this provision in every subcontract so that such provision will be binding upon each subcontractor.

Article VII Provisions Required by Law

Section 7.01 Provisions Deemed Inserted

Each and every provision required by law to be inserted in the Contract, including, but not limited to, the provisions set forth in Schedule “A” which is attached hereto and made a part hereof, shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and, in the event any such provision is not inserted or is not correctly inserted, then upon the application of either party, this Contract shall forthwith be physically amended to make such insertion or correction.

Section 7.02 Wage Rates

The Contractor shall post the appropriate prevailing wage schedules in a conspicuous place at the construction site. The Department of Labor shall provide the Contractor with posters relating to prevailing wage rates and same shall be displayed by the Contractor in a conspicuous place at the construction site. The Contractor shall also distribute wallet cards, to be provided by the Department of Labor, to all workers engaged at the construction site containing information relating to wage rates and telephone numbers to call if a worker believes his or her rights are being violated. The Contractor shall provide each worker with a written notice, informing them of the applicable prevailing wage requirements, and the Contractor must obtain a signed statement or declaration from such worker attesting to the fact that he or she has been given this information. Further, the Contractor is required to keep certified copies of its payrolls at the construction site.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

STATE UNIVERSITY CONSTRUCTION FUND

By ____________________________
    General Manager
    Philip W. Wood

By ____________________________

(If Corporation, affix Corporate Seal)

Approved as to form:

Attorney General of the State of New York

By ____________________________

Date: __________________________

Thomas P. DiNapoli
State Comptroller

By ____________________________

Date: __________________________
ACKNOWLEDGMENTS

(ACKNOWLEDGMENT BY INDIVIDUAL)

STATE OF NEW YORK
COUNTY OF ) SS:

On this _____ day of ____________, 20 ____, before me personally came

__________________________________________, to me known and known to me to be the
person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

__________________________________________
Notary Public

(ACKNOWLEDGMENT BY PARTNERSHIP)

STATE OF NEW YORK
COUNTY OF ) SS:

On this _____ day of ____________, 20 ____, before me personally came

__________________________________________, to me known and known to me to be the
person who executed the above instrument, who, being duly sworn by me did for himself depose and say that he is a member of the firm of ____________________________, consisting of himself and _____________ that he executed the foregoing instrument in the firm name of ____________________________ for the uses and purposes mentioned therein.

__________________________________________
Notary Public

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF NEW YORK
COUNTY OF ) SS:

On this _____ day of ____________, 20 ____, before me personally came

__________________________________________, to me known, who, being duly sworn, did depose and say that he resides in ____________________________; that he is the ____________________________, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

__________________________________________
Notary Public
SCHEDULE “A”
PROVISIONS REQUIRED TO BE INSERTED BY LAW

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the Contract” or “this Contract”) agree to be bound by the following clauses which are hereby made a part of the Contract (the word “Contractor” herein refers to any party other than the Fund, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. Executory Clause. In accordance with Section 376 of the Education Law, the Fund shall have no liability under this Contract to the Contractor or to anyone else beyond funds appropriated and available for this Contract.

2. Non-Assignment Clause. In accordance with Section 138 of the State Finance Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Fund and any attempts to assign the Contract without the Fund’s written consent are null and void. The Contractor may, however, assign its right to receive payment without the Fund’s prior written consent unless this Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. Comptroller’s Approval. In accordance with Section 112 of the State Finance Law (or, if this Contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this Contract exceeds $5,000 ($20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this Contract, the Fund agrees to give something other than money, it shall not be valid, effective or binding upon the Fund until it has been approved by the State Comptroller and filed in his office.

4. Workers’ Compensation Benefits. In accordance with Section 142 of the State Finance Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefits of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. Non-Discrimination Requirements. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work; or for the manufacture, sale, or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239, as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

6. Wage and Hours Provisions. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements,
including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. Non-Collusive Bidding Requirement. In accordance with Section 139-d of the State Finance Law, if this Contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Fund a non-collusive bidding certification on the Contractor’s behalf.

8. International Boycott Prohibition. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Contract exceeds $5,000, the Contractor agrees, as a material condition of the Contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract's execution, such Contract, amendment or modification thereto shall be rendered of no effect void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. Set-Off Rights. The Fund shall have all of its common law equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Fund's option to withhold for the purposes of set-off any monies due to the Contractor under this Contract up to amounts due and owing to the Fund with regard to this Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the Fund or the State for any other reason including, without limitation, fee delinquencies, fee delinquencies or monetary penalties relative thereto. The Fund shall exercise its set-off rights in accordance with normal Fund practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Fund, its representatives, or the State Comptroller.

10. Records. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, “the Records”). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the Fund, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the state, for the term specified above for the purposes of inspection, auditing and copying. The Fund shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers’ Law (the “Statute”) provided that: (i) the Contractor shall timely inform an appropriate fund official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Fund's right to discovery in any pending or future litigation.

11. Identifying Information and Privacy Notification.

(a) Federal Employer Identification Number and/or Federal Social Security Number. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Fund must include the payee’s identification number, i.e. the seller's or lessor's identification number. The number is either the payee’s Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.
Privacy Notification.

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Fund and the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the Fund. The information is maintained in the New York State’s Central Accounting System by the Director of State Accounts, Office of the State Comptroller, 110 State Street, Albany, New York 12207.

12. Equal Employment Opportunities For Minorities and Women. In accordance with Section 312 of the Executive Law, if this Contract is: (i) a written agreement or purchase order instrument providing for a total expenditure in excess of $25,000.00, whereby the Fund is committed to expend or does expend funds in return for labor, services, services supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Fund; or (ii) a written agreement in excess of $100,000.00 whereby the Fund is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State-assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor and its subcontractors will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination, and rates of pay or other forms of compensation:

(b) At the request of the Fund, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor’s obligations herein; and

(c) The Contractor shall state in all solicitations or advertisements for employees, that, in the performance of the Fund’s Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor will include the provisions of (a), (b) and (c), above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning, or design of real property and improvements thereon (the “Work”) except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this Contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The Fund shall consider compliance by a contractor or subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this Section. The Fund shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and, if such duplication or conflict exists, the Fund shall waive the applicability of Section 312 to the extent of such duplication or conflict. The Contractor will comply with all duly promulgated and lawful rules and regulations of the New York State Department of Economic Development’s Division of Minority and Women’s Business Development pertaining thereto.
13. Conflicting Terms. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Schedule “A”, the terms of this Schedule “A” shall control.

14. Governing Law. This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. Prompt Payment Requirements. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law. For the purposes of Article XI-A of the State Finance Law, the Controller’s Office of the State University Construction Fund, whose mailing address is The State University Plaza, 353 Broadway, Albany, New York 12246, is the Fund’s designated payment office.

16. No Arbitration. Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. Service of Process. In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor’s actual receipt of process or upon the Fund’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Fund in writing, of each and every change of address to which service of process can be made. Service by the Fund to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. The Omnibus Procurement Act of 1992, as amended, requires that, by signing this Proposal, the bidder certifies that whenever its Total Bid amount is greater than $1,000,000: (a) it has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this Project, and has retained the documentation of these efforts to be provided upon request to the State; (b) it has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) it agrees to make reasonable effort, to provide notification to New York State residents of employment opportunities on this Project through listing and sub contracts with the Community Services Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The bidder further agrees to document these efforts and to provide said documentation to the State and the Fund upon request; and (d) it acknowledges notice that New York State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts. Documented efforts by a successful bidder shall consist of and be limited to showing that such bidder has:

(a) Solicited bids in a timely and adequate manner, from New York State Business Enterprises including certified Minority and Women’s Business Enterprises, or

(b) Contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises, or

(c) Placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or

(d) Participated in bidder outreach conferences.

(e) If the bidder determines that New York State Business Enterprises are not available to participate on the Contract as subcontractors or suppliers, the bidder shall provide a statement indicating the method by which such determination was made.

(f) If the bidder does not intend to use subcontractors on the Contract, the bidder shall provide a statement verifying such intent.
19. **Chapter 807 of the Laws of New York of 1992**, requires that the Contractor and any individual or legal entity in which the Contractor holds a 10 percent or greater ownership interest and any individual or legal entity that holds a 10 percent or greater ownership interest in the Contractor’s firm either (a) have no business operations in Northern Ireland or, if they do have such an interest, (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the [MacBride Fair Employment Principles](#) and shall permit independent monitoring of their compliance with such Principles.

20. The Contractor certifies that all information provided to the Fund with respect to State Finance Law Section 139-k is complete, true and accurate.

21. The Fund reserves the right to immediately terminate this contract in the event that it is found that the certification filed by the Contractor in accordance with State Finance Law 139-k was intentionally false or intentionally incomplete.
SCHEDULE I  Unit Prices

Refer to Section 4.04 of the Agreement for additional information.

Work or Material Description ______  Amount in Words ______  Amount in Figures ______

SCHEDULE II  Allowance(s)

Refer to Section 4.05 of the Agreement for additional information. The amount(s) indicated below shall be included in the Total Bid amount and their total indicated on the Proposal in the space provided.

Work or Material Description ______  Amount in Words ______  Amount in Figures ______

SCHEDULE III  Field Order Allowance

Refer to Section 4.05A of the Agreement for additional information. The amount indicated below shall be included in the Total Bid amount and indicated on the Proposal in the space provided.

____________________________________  _____________________________
(in words)  (in figures)