



The Culture of Care

ERIE COUNTY MEDICAL CENTER CORPORATION

REQUEST FOR PROPOSALS
CONSTRUCTION MANAGEMENT SERVICES
FOR
MULTIPLE PROJECTS

FEBRUARY 15, 2019

RFP # 21904

The deadline for submission of proposals is **Thursday, March 14, 2019 at 11 a.m. EST**. Submit one (1) sealed paper copy and one (1) electronic copy (on flash drive or CD-ROM) of the proposal to:

Erie County Medical Center Corporation
Attention: Sarina M. Rohloff
462 Grider Street - Room G-140
Buffalo, New York 14215

LATE, EMAILED OR INCOMPLETE PROPOSALS MAY BE REJECTED

Mark in left hand corner of envelope:

RFP # 21904

Due: March 14, 2019

Submitted by: _____

M/WBE PRE-BID CONFERENCE CALLS TO BE HELD:

Wednesday, February 27, 2019 at 10 a.m. EST.

VIA TOLL FREE TELEPHONE CONFERENCE BRIDGE: 1-866-244-8528

Guest Passcode: 898300

In accordance with State Finance Law Sections 139-j and 139-k, the designated contact for this RFP is listed below. All questions regarding this RFP must be submitted in writing to the designated contact within the timeframes set forth in the RFP Schedule located at Section 3 of this RFP.

Designated contact: Sarina M. Rohloff, RFP/IFB Coordinator (Srohloff@ecmc.edu)

1. BACKGROUND

Erie County Medical Center Corporation (“ECMCC”), located in Buffalo, New York, is a public benefit corporation created by state law on July 22, 2003, having previously operated as a department of the County of Erie, New York.

ECMCC has an advanced academic medical center consisting of 583 inpatient beds, as well as a Center for Oncology Care, a Center of Excellence for Transplantation and Kidney Care, a Behavioral Health Center of Excellence, numerous on- and off-campus primary care and family health centers, more than thirty outpatient specialty care services, and the Terrace View Long-Term Care Facility, consisting of 390 beds.

In addition, ECMCC is a verified Level 1 Adult Trauma Center by the American College of Surgeons, designated a Level 1 Adult Trauma Center by the NYS Department of Health, and is a regional center for burn care, behavioral health services, transplantation, medical oncology and head & neck cancer care, and rehabilitation. Finally, ECMCC is also affiliated with and a major teaching facility for the University of Buffalo.

2. RESERVATION OF RIGHTS. ECMCC reserves the rights to:

- 2.1 Reject any and all proposals submitted in response to this Request for Proposals (“RFP”);
- 2.2 Disqualify any respondent whose conduct or proposal fails to conform to the requirements of this RFP;
- 2.3 Withdraw this RFP at any time at its sole discretion;
- 2.4 Prior to submission of proposals to amend the RFP specifications to correct errors or oversights, or to supply additional information as it becomes available;
- 2.5 Change any of the scheduled dates;
- 2.6 Waive any requirements that are not material;
- 2.7 Waive any non-conformity with the requirements of this RFP;
- 2.8 Terminate this RFP process at any time;
- 2.9 Seek clarification from a respondent at any time throughout the RFP process for the purpose of resolving ambiguities or questioning information presented in proposals;
- 2.10 Award the contract in whole or in part and/or apportion the award among one or more respondents;
- 2.11 Negotiate final terms with the successful respondent(s);
- 2.12 Conduct contract negotiations with the next responsible bidder, should ECMCC be unsuccessful in negotiating with the selected bidder; and

- 2.13 Prepare a list of finalists based on initial proposal evaluations, request that finalists present in-person or telecommunicated presentations to ECMCC, and allocate additional points based on these presentations.
- 2.14 ECMCC reserves the right to award additional projects to the successful respondent on an as needed basis. These projects will be negotiated at the time of request.

3. RFP SCHEDULE:

RFP Issued:	Friday, February 15, 2019
M/WBE pre-proposal conference call:	Wednesday, February 27, 2019
Deadline for Questions:	Thursday, February 28, 2019
Addendum Issued:	Thursday, March 7, 2019
Proposals Due:	Thursday, March 14, 2019
Contract Award:	TBD

QUESTIONS:

Email all questions to Srohloff@ecmc.edu. Emails regarding this RFP must state “RFP# 21904” in the subject line.

Please be sure to check ECMCC's website at www.ecmc.edu/about-ecmc/procurement/bid-opportunities and also the NYS Contract Reporter (NYSCR) website at www.nyscr.ny.gov for any updates related to this RFP.

MANDATORY PRE-PROPOSAL CONFERENCE CALLS:

An M/WBE pre-proposal conference call is scheduled for **Wednesday, February 27, 2019 at 10 a.m. EST**. This conference call can be accessed by dialing 1-866-244-8528, Conference ID 898300. The purpose of this call is to provide an overview of the RFP and focus on the M/WBE requirements and permit respondents an opportunity to ask general RFP policy and procedures questions. Any content-specific questions however must be submitted in writing by end of day **Thursday, February 28, 2019** to Sarina M. Rohloff at Srohloff@ecmc.edu. A recording of the conference call will be accessible on the ECMCC website at <http://www.ecmc.edu/category/bid-opportunities>.

4. SCOPE OF SERVICES/SPECIFICATIONS:

INTRODUCTION

Erie County Medical Center Corporation (“ECMCC”) is seeking qualified consultants’ proposals for Construction Management (“CM”) services for multiple construction projects at ECMCC on its Grider Street campus. (3) Separate projects are anticipated to be constructed:

- MEP & Elevator Improvements Project
- Operating Room Renovations Project
- 11th & 12th Floor Renovations Project

The delivery method for these projects is a Construction Manager at-risk, which consists of a preconstruction phase and a construction phase with separate contracts for each phase. During the preconstruction phase of the projects, the CM will work with two A/E design consultant teams. Kidney Architects will be the architect administering the MEP & Elevator Improvements Project as well as the Operating Room renovation project. Clark Patterson Lee (“CPL”) will be the architect administering the 11th & 12th Floor Renovations (the “Project Designers”). The CM will collaborate with the Project Designers on the design, constructability, cost and schedule of the Projects and develop a Guaranteed Maximum Price (“GMP”) proposal to construct each Project. It’s anticipated that separate GMP’s will be developed for each project, and that the projects will be constructed under a future Project Labor Agreement. Additional project related conceptual drawing information can be found within Appendix A.

Upon ECMCC’s acceptance of the GMP’s, ECMCC will issue a contract to the CM for the construction phase on each project. If ECMCC does not agree to the GMP, then ECMCC will not award the construction phase of the projects to the CM.

PROJECT DESCRIPTION:

- **MEP & Elevator Improvements Project**

This project will include major improvements to the main hospital & boiler chiller plants mechanical, electrical, plumbing and HVAC systems. Extensive utility shutdowns, temporary system cross overs and phased sequences of construction are anticipated for this project including weekends & 3rd shift work. The Projects scope will include the replacement of emergency generators, air handler units, air conditioning units, VAV’s & adjustable speed drives. Several temporary air handler units & roof steel support frames will be used to keep the building systems operational. Extensive electrical system replacements will include – electrical substations, transfer switches, motor control centers, interior lighting improvements, Fire alarm improvements and direct digital control work. The project will also include: elevator replacements at the lab building and selective repairs to the public elevators and DK Millers elevator. Work will also include fire protection / sprinkler installations, as well as underground fuel tank removals and replacements. The scope of work will be bid out as two (2) major projects. The first project is anticipated to be out to bid in June of 2019. The majority of this project will include scope associated with the emergency generator replacements. The second project will focus on HVAC scope (air handler replacements) this project will be put out to bid 2-3 months after the generator project. Multiple alternates will be included in the projects to give the owner financial flexibility on scope adjustments. The preliminary anticipated project duration is 24 months, this may be increased pending final sequencing of temporary air handler relocations.

- **Estimated total construction cost is \$45 million dollars.**
- Project is currently in the Schematic design phase.

- **Operating Room (OR) Renovation Project**

This projects scope includes the construction of four (4) new operating rooms on the 1st floor of the hospital with associated support spaces (soiled holding, storage rooms, clean & restricted corridors etc.). One of the new OR’s will be a hybrid OR. The new OR’s would convert existing vacant space from a previous behavioral health unit. The project would also include: large group training rooms, office space, conference rooms, simulation rooms, as well as a new patient observation unit. This project may be constructed in multiple phases due to its location and interface with current ongoing hospital operations. These renovations will include approximately 20,000 sq. ft. This project is anticipated to be out to bid in September of 2019, “make ready” work would be performed first at several existing clinical areas, OR construction would start after the new ED Expansion project

currently under construction is completed and fully operational. This is anticipated to occur in May of 2020. The preliminary anticipated project duration is 12 months.

- **Estimated total construction cost is \$10 million dollars.**
 - Project is currently in the programming design phase.
- **11th & 12th Floor (Patient Wing) Renovation Project**

This projects scope includes renovations of two (2) existing wings in the hospital on the 11th floor. These zones were previously designed as behavioral health space, their current usage is a combination of office space, vacant patient rooms for storage and clean / soiled holding areas. This project would require the relocation of the hospitals main telecom operator rooms that service all incoming calls to the hospital. Twenty-two (22) new private patient rooms will be constructed, including a main nurse’s station, patient lounge, dictation areas and ADA bath rooms as well as MEP improvements for both wings. The main elevator lobby would receive new finishes and the existing lobby bathrooms would also be renovated. These renovations will include approximately 15,000 sq. ft. The 12th Floor (Zones 1 & 4) Renovations will be limited in scope. One existing patient room in each wing will be fully renovated into an ADA accessible restroom and supply storage space. The zone #4 wing will have a new sprinkler system installed including all associated ceiling components. A new nurse’s station will also be created in the zone # 4 wing along with flooring replacements. Any new ceiling work associated in zones #1 & #2 will also include sprinkler system infrastructure for future tie-ins. This project is anticipated to be out to bid in late May of 2019. The preliminary anticipated project duration is 10 months.

 - **Estimated total construction cost is \$9 million dollars.**
 - Project is currently in the Schematic design phase.

FIRM’S INFORMATION REQUESTED

In order to be considered, proposals submitted in response to this Request for Proposals shall include the following information:

1. A narrative description of your firm’s experience in providing CM services under the AIA A133 “Standard Form of Agreement Between The Owner & Construction Manager as Constructor” (with GMP) contracting format.
2. A narrative description of your firm’s experience in providing CM services applicable or similar to that of the projects scope. Relevant project experience should include projects with major mechanical, electrical, & HVAC improvements. Relevant experience shall also include construction renovation projects that were carried out within an existing medical facility that is continuously in operation 24 hours a day / 7 days a week. Your explanation should include 1) the applicable contract format, 2) the value of the construction/renovation work, 3) detail on the work your firm has done for municipal health care entities having municipal union involvement, and work for academic medical centers, 4) your firm’s success with promoting and achieving past clients’ Equal Employment Opportunity and Minority & Women’s Business Enterprise (“M/WBE”) commitments as they related to the construction dollars and labor hours and, 5) your firm’s success in working with M/WBE sub-consultants or within M/WBE joint-ventures toward the fulfillment of CM or CM-related services.
3. Current resumes of all personnel that will be assigned to this project if your firm is selected to provide CM services. In addition, explain what role will be played by each member of your proposed team on this project.

4. CM Service Fee Structuring:

A description of your proposed fee structure for the CM services that are being sought by ECMCC is required in the format described below. Before establishing these fee structures there are a few key service scope factors that the Proposers will need to account for in their applicable fee percentages. These factors are as follows:

- a. For the purposes of this RFP, the definition of “Contracted Value” shall mean the sum of all project applicable construction, renovation, furniture, fixture, and equipment contract costs. This would specifically exclude project applicable Architectural/Engineering costs, including direct personnel and reimbursable expenses, and any related design service fees.
- b. For the purposes of this RFP, the standard set of CM services (upon which the Proposer’s fee percentages are based) shall include the basic CM responsibilities defined in the base A133 CM/Owner Agreement and shall specifically include the following supplemental services, as further clarified below:
 - 1) Environmental – A/E developed contract documents shall identify and specify hazardous material abatement and/or disposal requirements that may be required. Any resulting need for third party construction phase monitoring, sampling, or other related services shall be provided through the CM as a reimbursable expense.
 - 2) Signage & Wayfinding – A/E developed contract documents shall identify project specific signage and wayfinding requirements which shall be consistent with ECMCC’s standard signage specifications.
 - 3) Furniture, Fixtures & Equipment – A/E developed contract documents shall identify project specific FF&E requirements, both fixed & movable, differentiating between contractor and owner provided items. A/E shall ensure that all FF&E requirements are accounted for and fully coordinated with the constructed and/or renovated project, this being part of the standard A/E service scope. CM will assist with the coordination of all medical equipment on the renovation projects including hospital vendor shop drawing discipline coordination with MEP trades.
 - 4) Security & Access Control- the contract documents shall identify project specific extensions and or expansions to existing security and access control systems, this being part of the standard A/E service scope.
 - 5) Special Inspections- The CM will be required to coordinated field installations with the testing & inspection requirements as defined by the AE’s statement of special inspections. The special inspections agency will be directly contracted to the owner.

The CM shall be responsible for the management of the bid and construction phase of each of these above noted scope items as well as civil, structural, architectural, mechanical, electrical, plumbing, fire protection disciplines and MEP commissioning. The Commissioning agent will be contracted by the AE teams.

The CM shall also be responsible for monitoring general subcontractor compliance with ECMCC's M/WBE and Labor Force Utilization Program, including the development of a typical monthly and quarterly tabulation of all subcontracted progress these goal efforts. The CM shall be responsible to report on a monthly and a quarterly basis, its own level of M/WBE and Labor Force Utilization Program compliance, as applicable to the related professional consultant goals.

c. Extent of Services:

Preconstruction Phase Services

- 1) Preconstruction Phase Direct Personal Expenses ("DPE") and Reimbursable Expenses ("RE") for the purposes of this RFP are recognized as a variable which will be negotiated based upon the eventual scope and extent of the required preconstruction services for the individual or combined projects being considered.
- 2) Should any preconstruction fee be sought, state the desired amount as a percentage of preconstruction DPE. This percentage shall exclude preconstruction reimbursable expenses which shall be billed at cost. Denote this percentage in the appropriate cells on the provided matrix. (Appendix B).
- 3) The AE design teams are responsible for providing the schematic design project estimates. The CM will be required to provide design development (DD) estimates and 100% (CD) construction document estimates prior to going out to bid on each of the projects.
- 4) The CM will be responsible for the development and coordination of front end specifications with assistance from the AE. This will include the integration of any owner interface documents and requirements including but not limited to: contractor badging, utility shutdown request forms, interim life safety checklists, infection control requirements, above ceiling work permits...etc.
- 5) In reference to Article 2.1.4, Phased Construction, of the A133 document, the CM will be responsible for developing and issuing multiple phasing and sequencing drawings as needed for each of the (3) major projects. It's anticipated that some of the work on The MEP & Elevator Improvements project will need to be coordinated with the owners current Building Envelope project (CM) in terms of roof replacements, logistics & crane placements.
- 6) The CM will be responsible to compile, maintain and update a complete set of (DOH) closeout documents in preparation of any regulatory C of O inspections. This will include - MEP testing data, certifications, balancing reports etc.

Construction Phase Services

- 1) Construction Phase DPE shall be recognized as a percentage of applicable “contracted value”. Denote this percentage in the appropriate cells on the provided matrixes.
- 2) Construction Phase RE for the purposes of this RFP are recognized as a variable which will be negotiated (unless otherwise specified) based upon the eventual scope and extent of the required construction services for the individual or group of projects being considered. Reimbursable expenses shall be billed at cost.
- 3) Construction Phase Fee shall be recognized as a percentage of applicable “contracted value”. Denote this percentage in the appropriate cells on the provided matrixes.
- 4) The CM will be required to provide user licenses and any associated training within their base service fee for the owner, architect & owners rep. for construction administration software usage if the successful respondents system requires such. This software will be used by the project team for monitoring- submittals, issuing & responding to RFI’s, cost management, meeting minutes, etc. Using this system, the CM will be required to provide monthly financial updates on pending cost issues including cost projections on any non-quoted scope of work items that are in process to subcontractors.

d. Desired Service Fees:

- 1) Please provide the total percentage fees for the services outlined in (a) through (c). All service fees are to be indicated as a percentage of the project's “contracted value” range in the appropriate cells on the provided fee matrix (Appendix B).

5. Bond requirements.

All respondents shall be required to purchase and provide satisfactory evidence of a bid bond evidencing the ability of the respondent to honor the bid contained in its RFP proposal and execute all required contract documents if awarded this RFP. Contract documents are further described below in Section 8.1 and are included as Appendix C. It is understood that the current estimated value of the work performed under this RFP may not be the final value of the project.

The successful respondent shall further purchase and provide satisfactory evidence to ECMCC of bonds covering faithful performance of the resulting contract, and payment of obligations and moneys due to persons furnishing labor to the respondent or their subcontractors, arising under the contract. Copies of such bonds shall be kept by ECMCC and shall be open to public inspection.

5. REQUIRED DOCUMENTS:

The following forms must be submitted with each proposal:

- 5.1 Proposal Requirements Form (Exhibit A). In addition to filling out this form, all respondents should attach as part of this form a detailed proposal plan, a company profile with resumes, and a detailed fee schedule, as more particularly described within Exhibit A.
- 5.2 Equal Employment Opportunity Policy Statement (Exhibit B-1)
- 5.3 M/WBE Utilization Plan (Exhibit B-2) when applicable (see Section 7 below).
- 5.4 SDVOB Utilization Plan (Exhibit B-3) when applicable (see Section 7 below).
- 5.5 Respondent Data Form (Exhibit C).
- 5.6 Non-Collusive Bidding Certification (Exhibit D).
- 5.7 Disclosure, Affirmation and Certification in accordance with State Finance Law §§ 139-j and 139-k (Exhibit E).
- 5.8 Not-for-profit budget form (Exhibit F) (note this form is only required if the respondent is a not-for-profit corporation).
- 5.9 Diversity Practices Questionnaire (Exhibit G) when applicable (see Section 7 below)

6. EVALUATION CRITERIA:

- A. Quality of relevant project experience (40 points).
- B. Quality of references on relevant projects (10 points).
- C. Proposed service fee percentage (45 points).
- D. Diversity Practices (5 points).

TOTAL 100 points

ECMCC may prepare a list of finalists based on initial proposal evaluations and request that the finalists present in-person to ECMCC. An additional fifteen (15) points will be allocated to the presentations. Final award will be based on the total combined score of the finalist's initial proposal evaluation and their onsite presentation. The total maximum score in such case shall be one hundred fifteen (115) points.

7. M/WBE, SDVOB AND DIVERSITY PRACTICES REQUIREMENTS:

- 7.1 Equal Opportunity, Service-Disabled Veteran-Owned Business, and Minority/Women-Owned Business Enterprise Utilization. ECMCC is committed to promote equality of economic opportunity for minority group members and women, service-disabled veterans, and the facilitation of minority and women-owned business enterprise ("MWBE") and service-disabled veteran-owned business ("SDVOB") participation. In accordance with Articles 15-A and 17 of the New York State Executive Law and the regulations set forth at 5 NYCRR Parts 140-144 and 9 NYCRR Part 252, by submitting a

proposal, the respondent agrees to be bound by the provisions and follow the instructions set forth in Exhibit B to this RFP.

- 7.2 Utilization Plans. If Exhibit B reflects that MWBE and/or SDVOB participation requirements apply to this RFP, Respondents are required to submit an MWBE and/or SDVOB Utilization Plan (see Exhibit B-2 and Exhibit B-3 with their proposal in accordance with Exhibit B, 5 NYCRR 142.6(a) and 9 NYCRR 252.2(i).
- 7.3 Excluded Contracts. Certain procurements are excluded from MWBE and/or SDVOB participation. The requirements for each RFP are reflected in Exhibit B of this RFP. In the event that Exhibit B reflects no utilization requirements applicable to this RFP, the RFP is for an expenditure that is excluded from ECMCC's MWBE or SDVOB program and respondents are not required to submit an MWBE and/or SDVOB Utilization Plan. However, under all circumstances, respondents are encouraged to solicit MWBE and SDVOB utilization and to submit MWBE and SDVOB Goal Plans, and ECMCC may consider respondent's proposed MWBE and SDVOB utilization in determining which proposal represents the best value to ECMCC.
- 7.4 Not-for-profit respondents. Any services that are self-performed by a not-for-profit respondent (i.e., services not procured in the open market) in response to this RFP, as well as any personal services, rent, and utilities costs related to this procurement, are exempt from the M/WBE requirements that have been assigned to this procurement. After exempting personal services, rent, utilities and self-performance, M/WBE requirements will still attach to the entire remainder of the funds of the procurement.

(For example, if the respondent's proposal for this procurement is \$100,000, and \$80,000 of this amount is comprised of personal services, rent, utilities and self-performance by the not-for-profit, then the remaining \$20,000 would still be subject to the M/WBE requirements assigned in this contract.)

This exemption applies solely to not-for-profit respondents. For the purposes of calculating which funds shall still be subject to M/WBE requirements, all not-for-profit respondents should fill out and return the attached Exhibit F.

Respondents who are for-profit organizations are still required to apply the M/WBE requirements to the full amount of this procurement in their proposals. Please note that all parties are still responsible for submitting utilization plans (as detailed in Exhibits B and B-1) with their proposals that cover all services that are not exempt as described in the above.

- 7.5 Diversity practices Diversity practices are the efforts of contractors to include New York State-certified M/WBE's in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

Pursuant to New York State Executive Law Article 15-A, ECMCC has determined that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement are required to fill out and return the questionnaire attached to this RFP as Exhibit G as part of their response.

This questionnaire is intended to determine the overall diversity practices of respondents, regardless of specific M/WBE participation in this procurement.

8. GENERAL INSTRUCTIONS TO RESPONDENTS:

- 8.1 **By submitting a response, respondents agree to both the terms of this RFP as well as ECMCC's standard terms and conditions attached to this RFP as Appendix C. ECMCC reserves the right to reject any proposal in which the respondent objects to or attempts to modify the language of either this RFP or Appendix C.**
- 8.2 Insurance in the amounts designated in the attached Appendix D shall be procured by the successful respondent before commencing work and no later than fourteen (14) days after notice of award, which insurance shall be maintained without interruption for the duration of the Contract in the kinds and amounts specified by ECMCC. If the insurance is not provided in acceptable form within this period of time, then the Director of Purchasing may declare the vendor non-responsible and award the contract to the next lowest responsible vendor. Certificates of insurance shall be furnished by the successful respondent in conformity with the ECMCC standard insurance certificate.
- 8.3 Any change in wording or interlineations by a respondent of the RFP as published by ECMCC shall be reason to reject the proposal of such respondent, or in the event that such change in the RFP is not discovered prior to entering into a contract, to void any contract entered into pursuant to such RFP.
- 8.4 For the purpose of determining which proposal represents best value, it shall be the obligation of all respondents to present information and documentation to ECMCC to establish that the successful respondent possesses sufficient capital resources, skill, judgment and experience to perform the work or deliver the material, as per the RFP scope of services and specifications. ECMCC is not obligated to accept the lowest proposal, but will perform its evaluation based on the total criteria defined within the RFP.
- 8.5 Failure to perform or meet delivery schedules as per the accepted proposal or resulting contract may result in legal action by ECMCC to recover damages.
- 8.6 The successful respondent shall comply with all laws, rules, regulations and ordinances of the Federal Government, the State of New York and any other political subdivision or regulatory body which may apply to its performance under this contract.
- 8.7 Any cash discount which is part of a proposal will be considered as a reduction in price in determining the award of the proposal.
- 8.8 ECMCC may, as the need arises, order changes in the work through additions, deletions or modifications without invalidating the contract. Compensation, as it may be affected by any change, shall be adjusted by agreement between the contractor and ECMCC.
- 8.9 Any additional information which the respondent desires to add to the response shall be attached to and submitted with the formal response on a separate sheet of paper.
- 8.10 The proposal is firm and irrevocable for a period of 60 days from the date and time of the proposal opening. If a contract is not awarded within the 60 day period, a respondent to

whom the contract has not been awarded may withdraw his proposal by serving written notice of his intention to do so upon the ECMCC Purchasing Department.

- 8.11 Prices charged to ECMCC are to be no higher than those offered to any other governmental or commercial consumer. If respondent's organization has a New York State or a Federal GSA contract for any of the items covered in this RFP or any similar items, respondent shall so indicate in its proposal and supply a copy of such contract within five (5) days of a request by ECMCC.
- 8.12 The unit prices shall remain firm, and any other pricing, quote or charges in the proposal shall also remain firm, for delivery of the equipment, material, work or services described in this RFP. No cost increase not covered in the proposal shall be charged for any reason whatsoever unless agreed upon by ECMCC.
- 8.13 In executing their proposal, the respondent affirms that all of the requirements of the specifications are understood and accepted by the respondent, and that the prices quoted include all required materials and services. The respondent affirms they have checked all of the proposal figures and understands that ECMCC will not be responsible for any errors or omissions on the part of the respondent in preparing the proposal. Mistakes or errors in the estimates, calculations or preparation of the proposal shall not be grounds for the withdrawal or correction of the proposal or any proposal security.
- 8.14 **Restrictions on contact during the RFP process.** Pursuant to State Finance Law Sections 139-j and 139-k, this RFP includes and imposes certain restrictions on communication between respondents and ECMCC during the procurement process. A respondent is restricted from making contacts from the date the RFP is issued through the final contract award by ECMCC (the "Restricted Period"). During the Restricted Period, respondents may only contact the designated contact regarding this RFP. The designated contact is identified on the cover page of this RFP. Respondents are responsible for complying with State Finance Law Sections 139-j and 139-k. Directors, officer and employees of ECMCC are required to record certain information when contacted during the Restricted Period. A review of whether such contacts were permissible contacts will be considered in connection with any determination of responsibility of the respondent. Failure of any respondent to timely certify or to disclose accurate and complete information or the submission of any intentionally false or intentionally incomplete certification may result in the rejection of the contract award or if such contract has been executed, then the immediate termination of the contract. Violations may result in debarment of the respondent from proposing on or obtaining governmental procurement contracts in the State of New York.
- 8.15 **Freedom of Information Law.** During the evaluation process, the content of each RFP will be held in confidence and details of any RFP will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the proposal contains any such trade secrets or other confidential or proprietary information, the respondent must submit a request to exempt such information from disclosure. Such request must be in writing, must state the reasons why the information should be exempt from disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the entire contents of a proposal from disclosure have generally not been found to be meritorious and are discouraged. Respondents must limit any requests for exemption of information from

disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the respondent's competitive position. ECMCC assumes no responsibility for disclosure of unmarked data for any purpose. ECMCC will review such designations in making its determination whether disclosure is required, which determination shall be binding on the respondent.

EXHIBIT A

PROPOSAL REQUIREMENTS

Vendor Name: _____

RFP #: _____

Form completed by: _____

This form is a required document that must be completed and included with the RFP proposal submission. Please attach any additional documents to this form if necessary.

1. Please attach a detailed plan outlining how your company will meet all of the deliverables described in the Section 4 (Scope of Services/Specifications).
2. Please attach a company profile indicating persons who will be assigned to work with ECMCC and resumes. Contact information including contact name, physical address, email address and phone number of the designee that would be responsible for any additional or clarifying information ECMCC may need.
3. Please attach a detailed fee schedule and all fees incurred for the deliverables included in this RFP.
4. Provide three (3) references of facilities similar in size to ECMCC that may be contacted by ECMCC to discuss respondent's services.

Reference #1

Firm Name: _____

Contact Name: _____

Direct phone number: _____

Contact E-mail: _____

Reference #2

Firm Name: _____

Contact Name: _____

Direct phone number: _____

Contact E-mail: _____

Reference #3

Firm Name: _____

Contact Name: _____

Direct phone number: _____

Contact E-mail: _____

5. Disclose whether respondent has ever had a contract terminated and if so, provide a detailed explanation of the contract and circumstances surrounding termination.

6. Disclose whether any shareholder, director, officer or employee is currently employed by ECMCC, or was an employee of ECMCC during the two (2) year period preceding the date of the proposal, and if any shareholder, director, officer or employee is a member of any governing board of ECMCC or its affiliates.

7. Disclose any other areas that may be a potential conflict of interest.

8. Describe all contracts, affiliations, referral arrangements or other business relationships the respondent has with any hospital, health care system or health care provider with offices or facilities in Western New York.

EXHIBIT B

ERIE COUNTY MEDICAL CENTER CORPORATION MWBE, SDVOB AND EEO PROGRAM REQUIREMENTS

I. General Provisions

- A. ECMCC is required to implement the provisions of New York State Executive Law Article 15-A and Article 17-B, as well as 5 NYCRR Parts 142-144 (“MWBE Regulations”) and 9 NYCRR Part 252 (“SDVOB Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Upon responding to this IFB, the successful respondent (the “Respondent”) agrees, in addition to any other nondiscrimination provision within the resulting contract (the “Contract”) and at no additional cost to the ECMCC, to fully comply and cooperate with ECMCC in the implementation of New York State Executive Law Article 15-A and Article 17-B. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority and women-owned business enterprises (“MWBEs”) and service-disabled veteran-owned businesses (“SDVOBs”). Respondent’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 and 9 NYCRR §252.2 shall be a part of these requirements, though demonstration of good faith efforts is not a substitute for meeting the M/WBE and SDVOB participation requirements placed on the contract. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of Contract, leading to the disqualification of Respondent, the withholding of funds, or such other actions, liquidated damages pursuant to Section VI of this Exhibit or enforcement proceedings as allowed by the Contract.

II. MWBE Contract Requirements

- A. For purposes of this IFB and Contract, ECMCC hereby establishes an overall minimum requirement of 30% for Minority and Women-Owned Business Enterprises (“MWBE”), comprised of specific requirements of 20% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE requirements established herein, Respondents should reference the directory of New York State Certified MWBEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

Additionally, Respondent is encouraged to contact ECMCC’s MWBE Coordinator at (716) 898-4947 and the Division of Minority and Woman Business Development at (518) 292-

EXHIBIT B

5250, (212) 803-2414, or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.

III. MWBE Utilization Plans

- A. Each Respondent shall submit a preliminary MWBE utilization plan (the “Preliminary Utilization Plan”) with their bid. A bid may not be considered where the Respondent fails to include a Preliminary Utilization Plan. The preliminary Utilization Plan must set forth the names, addresses, phone numbers, and classification (MBE or WBE, not both) of the NYS certified MWBE firms the Respondent intends to utilize in performing the Contract. Where the Respondent is a NYS certified MWBE, and will self-perform some or all of the contract work, the MWBE bidder should identify itself on the Preliminary Utilization Plan (as either MBE or WBE, not both). MWBE certified bidders must list at least one other MWBE firm that will be utilized to perform the Contract. For example, if Respondent is an MBE, the Respondent must list itself and must also list a WBE.
- B. Respondents must submit a fully-executed final MWBE utilization plan (the “Utilization Plan”), attached as Exhibit B-2, within 48 hours of notification by ECMCC that Respondent is the apparent low responsible bidder. ECMCC reserves the right to disqualify any Respondent who fails to submit a fully executed MWBE Utilization Plan within the deadline after receipt of notice by ECMCC. The Utilization Plan shall minimally include the information required in the Preliminary Utilization Plan, as well as the percentage or, if known, actual dollar amounts to be paid to MWBEs of the Contract which the Respondent intends to be performed by a certified MWBE; and a statement that the utilization of certified MWBEs for non-commercially useful functions may not be counted towards utilization of certified MWBEs in the utilization plan.
- C. By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a Contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Respondent agrees to utilize the MWBEs listed in the MWBE Utilization Plan for the performance on the Contract. Any modifications or changes to the agreed participation by MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ECMCC for subsequent review and approval.
- D. ECMCC will review the Respondent’s submitted Utilization Plan, and, will issue a written notice of acceptance or deficiency in meeting the MWBE requirements regarding the Utilization Plan. The Respondent must provide a written remedy in response to the notice of deficiency in the form of a revised utilization plan within five (5) business days of receipt of the notice. If the written remedy that is submitted is not timely or is found by ECMCC to be inadequate, ECMCC shall notify the Respondent and may, pursuant to 5 NYCRR 142.6(f), at its discretion direct the Respondent to submit, within five (5) business days of notification by ECMCC, a request for a partial or total waiver of MWBE participation requirements in the format described in 5 NYCRR 142.7. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. Where ECMCC determines, after having given notice of deficiency pursuant to 5 NYCRR 142.6(c), that a Respondent has failed to submit an acceptable utilization plan and ECMCC

EXHIBIT B

has not granted permission to file or has not in its own discretion approved a waiver, ECMCC may proceed with awarding to the next lowest bidder or the next ranked Respondent:

1. Twelve (12) days after sending the notice of deficiency to the Respondent, and ECMCC has not received a request for an administrative hearing from the Respondent, or
2. After the mailing of a notice of disqualification, specifying the grounds for such disqualification, and no timely complaint has been served pursuant to this subsection, or timely complaint was served and ECMCC has received a written notification of a resolution regarding the complaint from New York State.

A Respondent who has received a written notice of disqualification may, within five (5) days of receipt of such a notice, file a complaint with New York State pursuant to Section 316 of the Executive Law. The Respondent shall serve a copy of its complaint upon New York State and ECMCC by personal service or certified mail, return receipt requested.

- F. ECMCC may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:
1. If a Respondent fails to submit a fully executed MWBE Utilization Plan;
 2. If a Respondent fails to timely submit a written remedy in the form of a revised utilization plan to a notice of deficiency;
 3. If a Respondent fails to submit a request for waiver upon request by ECMCC; or
 4. If ECMCC determines that the Respondent has failed to document good faith efforts.
- G. The Respondent agrees that a failure to comply with the utilization of the MWBEs as agreed in such MWBE Utilization Plan during the performance of the Contract shall constitute a material breach of the terms of the Contract, unless a new utilization plan has otherwise been approved by ECMCC. Upon the occurrence of such a material breach, ECMCC shall be entitled to any remedy provided herein. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Respondent acknowledges that if after award of Contract the Respondent is found to have willfully and intentionally failed to comply with the MWBE participation requirements set forth in the Contract, such a finding constitutes a breach of Contract and the Respondent shall be liable to ECMCC for liquidated or other appropriate damages, as set forth herein.
- H. Pursuant to 5 NYCRR §142.8, Respondents must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. Such documented efforts shall include, at a minimum:
1. Copies of its solicitations of certified MWBE and any responses thereto;
 2. If responses to the Respondent's solicitations were received, but a certified MWBE was not selected, the specific reasons that such enterprise was not selected;

EXHIBIT B

3. Copies of any advertisements for participation by certified MWBEs timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by ECMCC, with certified MWBEs which ECMCC determined were capable of performing Contract scope of work for the purpose of fulfilling the Contract participation requirements; and
5. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women-owned business enterprises.

ECMCC may also consider other factors, including those contained in 5 NYCRR §142.8, in determining whether the Respondent has satisfactorily documented good faith efforts.

- I. Where the MWBE performs a function or service which fails to serve a commercially useful function relating to the contract, no credit will be granted toward the utilization requirement. An MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MWBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing, where applicable, and paying for the material itself. An MWBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

Factors to be used in assessing whether a MWBE is performing a commercially useful function include: (1) the amount of work subcontracted; (2) industry practices; (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform; and (4) the credit claimed towards MWBE utilization requirements for the performance of the work by the MWBE.

- J. MWBE utilization crediting standards credit brokers only for their commission, or markup percentage, for the items they broker. Bona fide suppliers supplier are credited at 60% of the total contract value. Respondents should contact ECMCC's MWBE Coordinator if they are unclear on whether a potential MWBE's should be reduced for supplier or broker credits.

IV. Equal Employment Opportunity (EEO)

- A. The Respondent agrees to be bound by the provisions of Article 15-A and the corresponding MWBE regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Respondent shall comply with the following provisions of Article 15-A:

EXHIBIT B

1. Respondent and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Respondent shall submit an EEO policy statement, attached as Exhibit B-1, to ECMCC as an attachment with their proposal.
3. The Respondent's EEO policy statement shall include the following language:
 - a. The Respondent will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Respondent shall state in all solicitations or advertisements for employees that, in the performance of the 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.
 - c. The Respondent 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 Respondent's obligations herein.
 - d. The Respondent will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
4. If Respondent does not have an existing EEO policy statement, Respondent may adopt the attached model statement, attached as Exhibit B-1, (Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

C. Staffing Plan

Once the Contract has been awarded, Respondent shall be required to submit a plan

EXHIBIT B

designating the entire workforce of the Respondent of total staff of its organization, including ethnic background, gender, and Federal occupational categories.

D. Workforce Employment Utilization Report

1. Once a Contract has been awarded and during the term of Contract, Respondent is responsible for submitting a workforce employment utilization report (the "Workforce Report") to ECMCC, in a format to be provided by ECMCC, of the work force actually utilized on the Contract, broken down by specified ethnic background, gender, Federal occupational categories, and compensation paid to each relevant employee. The Workforce Report is to be submitted on a quarterly basis during the term of the Contract for contracts for services and commodities, and monthly for construction contracts, to report the actual workforce located in New York State and utilized in the performance of the Contract.
2. Any subcontractors of Respondent must also submit a Workforce Report described in the above Subsection 1 for the entirety of their workforce performing work on the Contract and located in New York State.
3. In limited instances, Respondent may not be able to separate out the workforce utilized in the performance of the Contract from Respondent's and/or subcontractor's total workforce. When a separation can be made, Respondent shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Respondent's and/or subcontractor's total workforce, Respondent shall submit the Workforce Report and indicate that the information provided is Respondent's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Respondent shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Respondent and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

V. Quarterly MWBE Contractor Compliance Report

Following award of Contract, Respondent is required to submit a Quarterly MWBE Contractor Compliance Report to ECMCC by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE requirements of the Contract.

VI. Liquidated Damages

- A. Where ECMCC determines that Respondent is not in compliance with the MWBE requirements of the Contract and/or the MWBE regulations and Respondent refuses to comply with such requirements, or if Respondent is found to have willfully and intentionally failed to comply with the MWBE participation requirements, Respondent shall be obligated to pay to ECMCC liquidated damages.

EXHIBIT B

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Respondent achieved the contractual MWBE requirements; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the ECMCC, Respondent shall pay such liquidated damages to ECMCC within sixty (60) days after they are assessed by ECMCC unless prior to the expiration of such sixtieth day, the Respondent has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the ECMCC.

VII. SDVOB Contract Requirements

- A. ECMCC hereby establishes a requirement of 6% on this IFB for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Respondent should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>.

Questions regarding compliance with SDVOB participation requirements should be directed to the ECMCC's MWBE/SDVOB coordinator at (716) 898-4947. Additionally, Respondent is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Respondent must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

VIII. SDVOB Utilization Plan

- A. Each Respondent shall submit a preliminary SDVOB utilization plan (the "Preliminary SDVOB Utilization Plan") with their bid. A bid may not be considered where the Respondent fails to include a Preliminary SDVOB Utilization Plan. The preliminary SDVOB Utilization Plan must set forth the names, addresses, and phone numbers of the NYS-certified SDVOB firms the Respondent intends to utilize in performing the Contract. Where the Respondent on a Contract for construction is a NYS certified SDVOB, and will self-perform some or all of the contract work, the SDVOB Respondent should identify itself on the Preliminary Utilization Plan.
- B. Respondents must submit a final fully-executed SDVOB Utilization Plan (the "SDVOB Utilization Plan"), attached as Exhibit B-3 within 48 hours of notification by ECMCC that Respondent is the apparent low responsible bidder. ECMCC reserves the right to disqualify any Respondent who fails to submit a fully executed SDVOB Utilization Plan within the

EXHIBIT B

deadline after receipt of notice by ECMCC. The SDVOB Utilization Plan shall minimally include the information required in the Preliminary Utilization Plan, as well as the percentage or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Respondent intends to be performed by a certified SDVOB, and a statement that the utilization of certified SDVOBs for non-commercially useful functions may not be counted towards utilization of certified SDVOBs in the SDVOB Utilization Plan.

- C. By signing the SDVOB Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a SDVOB Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a Contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Respondent agrees to utilize the SDVOBs listed in the SDVOB Utilization Plan for the performance on the Contract. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ECMCC for subsequent review and approval.
- D. ECMCC will review the Respondent's submitted SDVOB Utilization Plan, and, will issue a written notice of acceptance or deficiency in meeting the SDVOB requirements regarding the SDVOB Utilization Plan. The Respondent must provide a written remedy in response to the notice of deficiency in the form of a revised SDVOB Utilization Plan within five (5) business days of receipt of the notice. If the written remedy that is submitted is not timely or is found by ECMCC to be inadequate, ECMCC shall notify the respondent and may, pursuant to 9 NYCRR 252.2(1)(6), at its discretion direct the Respondent to submit, within five (5) business days of notification by ECMCC, a request for a partial or total waiver of SDVOB participation requirements in the format described in 9 NYCRR 252.2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. Where ECMCC determines, after having given notice of deficiency pursuant to 9 NYCRR 252.2(1), that a Respondent has failed to submit an acceptable SDVOB Utilization Plan or satisfactorily document its good faith efforts, ECMCC may proceed with the next ranked Respondent if ECMCC has not received a request for review from the Respondent. ECMCC shall conduct such review providing the Respondent with an opportunity to be heard and make a determination that confirms the Respondent is disqualified or reaffirms that the Respondent is qualified. Such determination shall constitute a final agency determination.
- F. ECMCC may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:
 - 4. If a Respondent fails to submit a fully executed SDVOB Utilization Plan;
 - 5. If a Respondent fails to timely submit a written remedy in the form of a revised SDVOB Utilization Plan to a notice of deficiency;
 - 6. If a Respondent fails to submit a request for waiver upon request by ECMCC; or
 - 4. If ECMCC determines that the Respondent has failed to document good faith efforts.

EXHIBIT B

- G. Respondent agrees that a failure to comply with the utilization of the SDVOBs as agreed in such SDVOB Utilization Plan during the performance of the Contract shall constitute a material breach of the terms of the Contract, unless a new SDVOB Utilization Plan has otherwise been approved by ECMCC. Upon the occurrence of such a material breach, ECMCC shall be entitled to any remedy provided herein. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Respondent acknowledges that if after award of Contract the Respondent is found to have willfully and intentionally failed to comply with the SDVOB participation requirements set forth in the Contract, such a finding constitutes a breach of Contract and the Respondent shall be liable to ECMCC for liquidated or other appropriate damages, as set forth herein.
- H. Where the SDVOB performs a function or service which fails to serve a commercially useful function relating to the contract, no credit will be granted toward the utilization requirement. An SDVOB performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SDVOB must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing, where applicable, and paying for the material itself. An SDVOB does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

Factors to be used in assessing whether a SDVOB is performing a commercially useful function include: (1) the amount of work subcontracted; (2) industry practices; (3) whether the amount the SDVOB is to be paid under the contract is commensurate with the work it is to perform; and (4) the credit claimed towards SDVOB utilization requirements for the performance of the work by the SDVOB.

IX. SDVOB Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Respondents must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Respondents' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Respondent, if any, scheduled by ECMCC with certified SDVOBs whom ECMCC determined were capable of fulfilling the SDVOB requirements set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

X. Monthly SDVOB Contractor Compliance Report

EXHIBIT B

In accordance with 9 NYCRR § 252.2(q), Respondent is required to report Monthly SDVOB Contractor Compliance to ECMCC during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB requirements. This information must be submitted using specified forms provided by ECMCC at times designated by ECMCC.

XI. SDVOB Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Respondent found to have willfully and intentionally failed to comply with the SDVOB participation requirements set forth in the Contract, shall be found to

EXHIBIT B-1

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT
AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 20_____

By _____

Print: _____ Title: _____

**EXHIBIT B-2
M/WBE UTILIZATION PLAN**

INSTRUCTIONS: This form must be submitted with any proposal or proposed negotiated contract or within 48 hours of notice from ECMCC that the respondent is the apparent lowest responsible bidder to an IFB. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority or Women-Owned Business Enterprise (MWBE) under the contract. Attach additional sheets if necessary.

Offeror's Name: _____
 Address: _____
 City, State, Zip Code: _____
 Telephone Number: _____
 Authorized Representative: _____
 Authorized Signature: _____

Federal Identification No.: _____
 Location of Work: _____
 RFP or Bid No.: _____
 M/WBE Goals in the Contract: 30%
 MBE Goals in the Contract: 20%
 WBE Goals in the Contract: 10%
 Contract Value: _____

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value or percentage of Subcontracts/ Supplies/Services
1.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
2.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
3.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
4.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
5.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

6.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
7.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
8.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

PREPARED BY (Signature): DATE: NAME AND TITLE OF PREPARER (Print or Type): SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR REJECTION OF YOUR BID/PROPOSAL AND/OR POSSIBLE TERMINATION OF YOUR CONTRACT. UTILIZATION OF CERTIFIED MWBES FOR NON-COMMERCIAL USE FUNCTIONS MAY NOT BE COUNTED TOWARD MWBE REQUIREMENTS.	TELEPHONE NO.:	EMAIL ADDRESS:
--	-----------------------	-----------------------

	FOR ECMCC M/WBE USE ONLY	
	REVIEWED BY:	DATE:
	UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ Contract No.: _____ Project No. (if applicable): _____ Contract Award Date: _____ Estimated Date of Completion: _____ Amount Obligated Under the Contract: _____ Description of Work: _____ NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	

**EXHIBIT B-3
SDVOB UTILIZATION PLAN**

INSTRUCTIONS: This form must be submitted with any proposal or proposed negotiated contract or within 48 hours of notice from ECMCC that the respondent is the apparent lowest responsible bidder to an IFB. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Service-Disabled Veteran-Owned Business (SDVOB) under the contract. Attach additional sheets if necessary.

Offeror's Name: _____

Federal Identification No.: _____

Address: _____

Location of Work: _____

City, State, Zip Code: _____

RFP or Bid No.: _____

Telephone Number: _____

SDVOB Goals in the Contract: 6%

Authorized Representative: _____

Authorized Signature: _____

Contract Value: _____

1. Certified SDVOB Subcontractors/Suppliers Name, Address, Email Address, Telephone No.		2. Federal ID No.	3. Detailed Description of Work (Attach additional sheets, if necessary)	4. Dollar Value or percentage of Subcontracts/ Supplies/Services
1.				
2.				
3.				
4.				
5.				

6.				
7.				
8.				

PREPARED BY (Signature): DATE: NAME AND TITLE OF PREPARER (Print or Type): SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 17-B, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR REJECTION OF YOUR BID/PROPOSAL AND/OR POSSIBLE TERMINATION OF YOUR CONTRACT. UTILIZATION OF CERTIFIED SDVOB'S FOR NON-COMMERCIALY USEFUL FUNCTIONS MAY NOT BE COUNTED TOWARD SDVOB REQUIREMENTS.	TELEPHONE NO.:	EMAIL ADDRESS:
	FOR ECMCC SDVOB USE ONLY	
	REVIEWED BY:	DATE:
	UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ Contract No.: _____ Project No. (if applicable): _____ Contract Award Date: _____ Estimated Date of Completion: _____ Amount Obligated Under the Contract: _____ Description of Work: _____ NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	

**EXHIBIT C
RESPONDENT DATA**

To facilitate correct drawing and execution of a contract for services, respondents shall supply full information concerning legal status:

Firm Name: _____

Any trade name or assumed name ("d/b/a"): _____

Address of principal office:

Street: _____

City: _____ State: _____

Zip: _____ Phone: _____

Check one:

- CORPORATION
- LIMITED LIABILITY COMPANY
- PARTNERSHIP
- INDIVIDUAL

Formed under the laws of the state of: _____.

If a foreign entity, state whether authorized to do business in the State of New York:

- YES
- NO

Is respondent a New York State certified minority-owned or women-owned business enterprise listed in the online State Directory? (If so, please provide a copy of the NYS Certificate with proposal).

- YES
- NO

Address of Local Office:

Street: _____

City: _____ State: _____

Zip: _____ Phone: _____

Names and addresses of all directors and officers (or managers if an LLC):

Names and percentage ownership interest of all shareholders, partners, or members:

EXHIBIT D
NON-COLLUSIVE BIDDING CERTIFICATION

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

- 1) The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other respondent or with any competitor;
- 2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the respondent and will not knowingly be disclosed by the respondent prior to opening, directly or indirectly, to any other respondent or to any competitor; and
- 3) No attempt has been made or will be made by the respondent to induce any other person, partnership, limited liability company or corporation to submit or not to submit a proposal for the purpose of restricting competition.

NOTICE

(Penal Law, Section 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

Affirmed under penalty of perjury this ____ day of _____, 20____.

Authorized Signature

Print Name and Title

EXHIBIT E
STATE FINANCE LAW §§ 139-J AND 139-K
DISCLOSURE, AFFIRMATION AND CERTIFICATION

I. Contractor Disclosure of Findings of Non-Responsibility and Prior Contract Terminations or Withholdings under State Finance Law §139-j:

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No

Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Contractor certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature

Name: _____

Title: _____

II. Contractor Affirmation Relating to Procedures Governing Permissible Contacts:

Contractor affirms that it understands and agrees to comply with the procedures of Erie County Medical Center Corporation relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

Date: _____ By: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

EXHIBIT F

NOT-FOR-PROFIT M/WBE BUDGET FORM

Any services that are self-performed by a not-for-profit respondent (i.e., services not procured in the open market) in response to this RFP, RFQ, or IFB, as well as any personal services, rent, and utilities costs related to this procurement, are exempt from the M/WBE goals that have been assigned to this procurement. After exempting personal services, rent, utilities and self-performance, M/WBE goals will still attach to the entire remainder of the funds of the procurement.

(For example, if the respondent's proposal for this procurement is \$100,000, and \$80,000 of this amount is comprised of personal services, rent, utilities and self-performance by the not-for-profit, then the remaining \$20,000 would still be subject to the M/WBE goals assigned to this procurement.)

This exception applies solely to not-for-profit respondents. Respondents who are for-profit organizations are still required to apply the M/WBE goals to the full amount of this procurement in their proposals. All parties are still responsible for submitting utilization plans (as detailed in Exhibits B and B-1) with their proposals that cover all services that are not exempt as described in the above.

The following chart is required to be submitted by all not-for-profit respondents. Each respondent must provide a breakdown of their entire proposed budget for the procurement. If you are not a not-for-profit entity, you do not have to complete this form.

Respondent name: _____

Proposed budget for work	
1 Personal services	\$ _____
2 Rent	\$ _____
3 Utilities	\$ _____
4 Self-performance	\$ _____
5 Other expenses <i>(Please provide line item descriptions; add additional sheets as necessary)</i>	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
6 Add the sum of Section 5. <i>(These funds <u>will</u> be subject to M/WBE requirements)</i>	\$ _____
7 Add the sum of Sections 1-4. <i>(These funds <u>will not</u> be subject to M/WBE requirements)</i>	\$ _____
Add the sum of sections 6 and 7. <i>(This number reflects the <u>total proposed budget</u> for the project.)</i>	\$ _____

RESPONDENT SIGNATURE

Signature of preparer

Date

Name of organization

Title of signatory

EXHIBIT G

DIVERSITY PRACTICES QUESTIONNAIRE



I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? **Yes or No**

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

Name	Title	Duties	Initiatives

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-ventures', partners or other similar arrangement for the provision of goods or services to your company's clients or customers? _____

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹ _____

4. Does your company provide technical training² to minority- and women-owned business enterprises? **Yes or No**

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

Date of program	MWBE Company	# of MWBE participating	# of years offered	# of hours per year

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? **Yes or No**

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company’s commitment to the governmental mentoring program.

Governmental Mentoring Program Name	Evidence of Commitment

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? **Yes or No**

If Yes, provide a description of such non-government procurements (including time period, goal, and scope and dollar amount) and indicate the percentage of the goals that were attained.

Time period	Goal	Scope & dollar amount	% of goals attained

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? **Yes or No**

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? **Yes or No**

If Yes, complete the attached Utilization Plan

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____
Printed Name of Signatory _____
Title _____
Name of Business _____
Address _____
City, State, Zip _____

STATE OF _____
COUNTY OF _____) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

EXHIBIT G

DIVERSITY PRACTICES QUESTIONNAIRE
SCORECARD

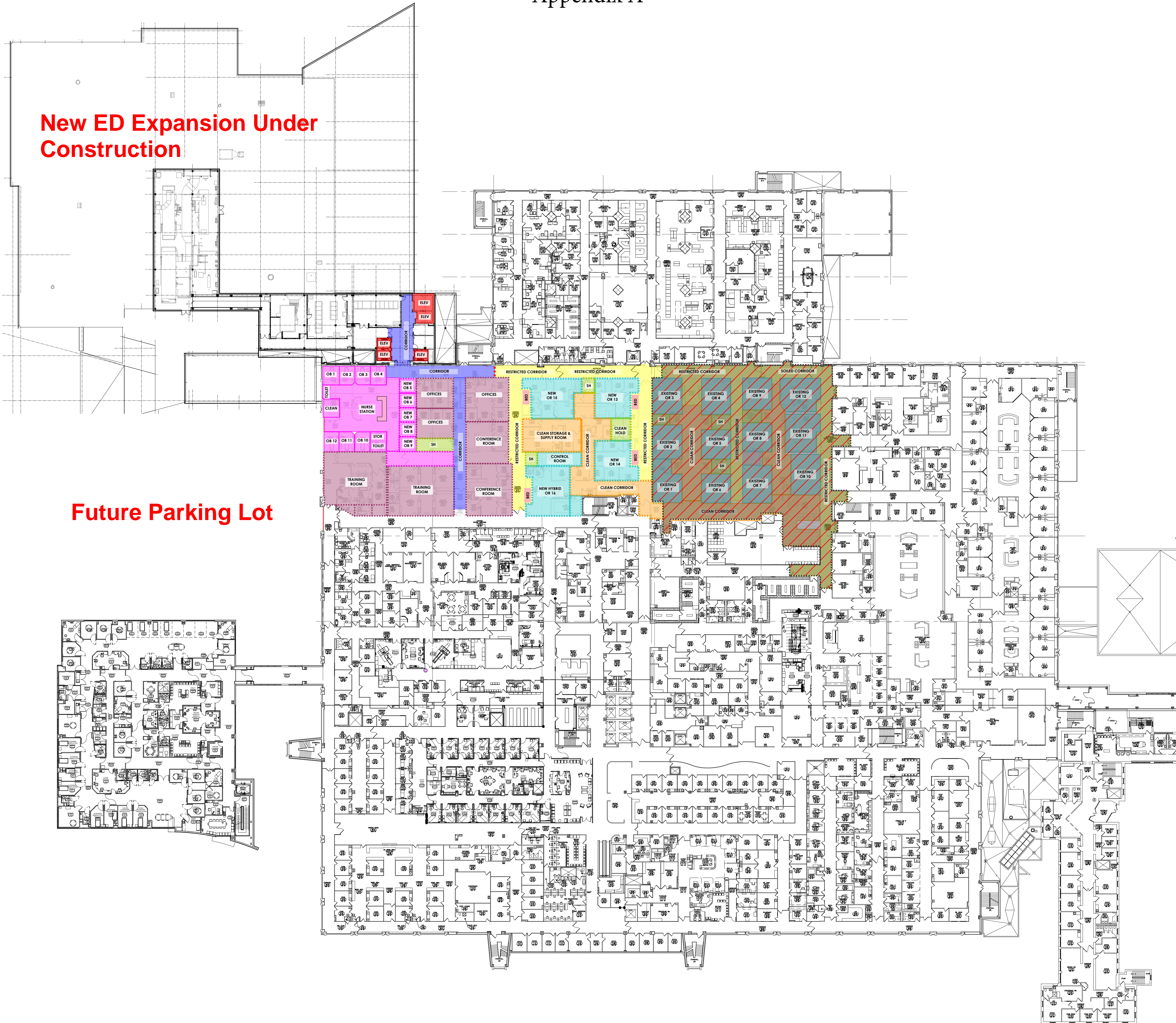
ECMCC RFP _____

Vendor Name _____

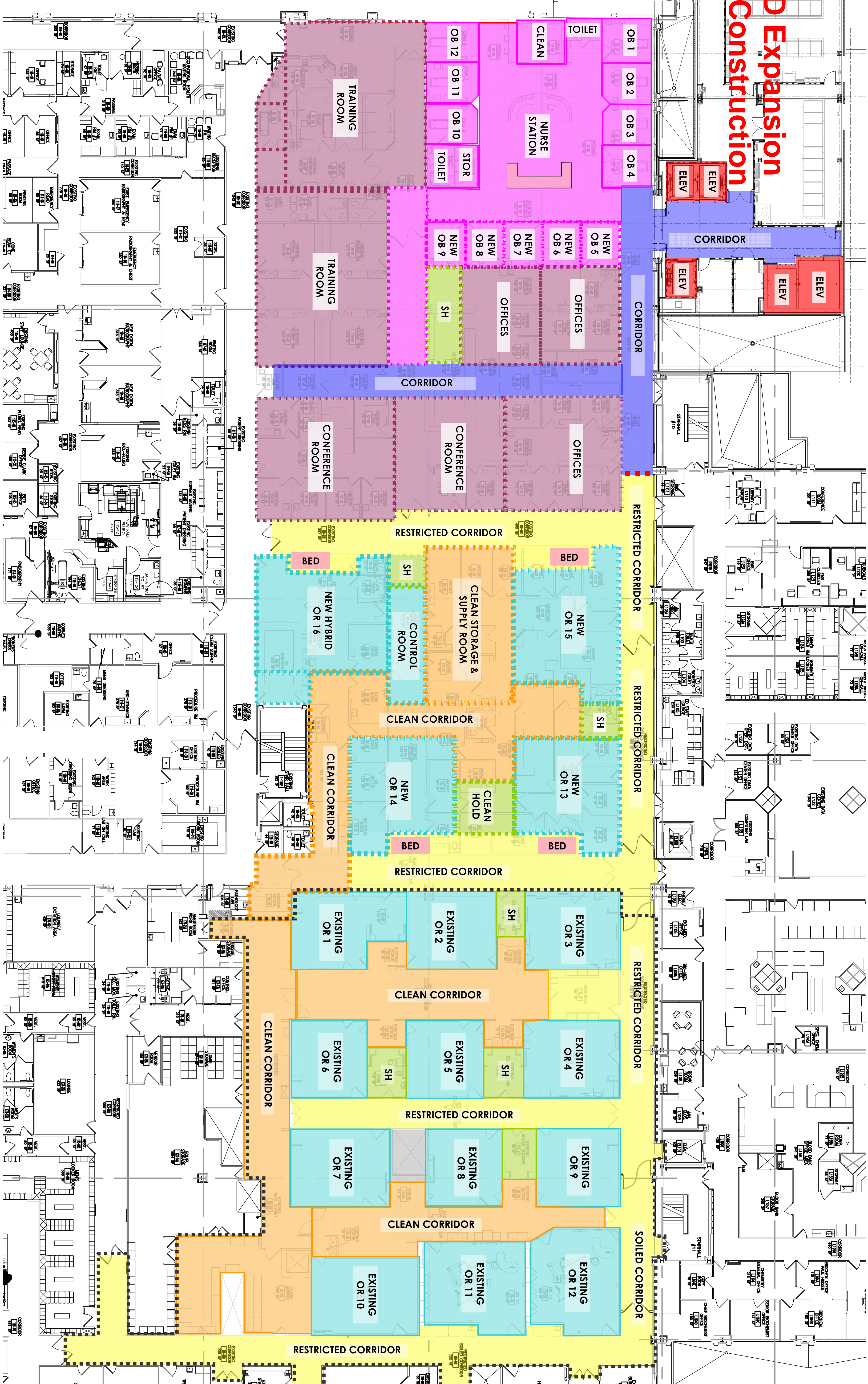
Diversity Questions	Total Possible Score	Vendor Score	Weighted Score					
			Yes = 5 pts			No = 0 pts		
Q1 - CDO or other person tasked with function	5		Yes = 5 pts			No = 0 pts		
Q2 - Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners	20		20% + 16 pts	15-19% 14 pts	10-14% 10 pts	5-9% 6 pts	1-4% 2 pts	0% 0 pts
Q3 - Percentage of overhead expenses paid to M/WBEs	16		20% + 16 pts	15-19% 10 pts	10-14% 7 pts	5-9% 4pts	1-4% 1 pts	0% 0 pts
Q4 - M/WBE Training	16		Robust 16 pt	Moderate 8 pt	Minimum 4 pt	None 0pt		
Q5 - M/WBE Mentoring	12		Robust 12 pt	Moderate 8 pt	Minimum 4 pt	None 0pt		
Q6 - Written M/WBE goals included in the Company's procurements	20		Robust 20 pt	Moderate 12 pt	Minimum 6 pt	None 0pt		
Q7 - Formal Supplier Diversity Program	6		Robust 6 pt	Moderate 4 pt	Minimum 2 pt	None 0pt		
Q8 - Utilization Plan	5		Robust 5 pt	Moderate 3 pt	Minimum 1 pt	None 0pt		
Total Score	100	0	NYS	1-20	21-40	41-60	61-80	81-100
Vendor Diversity Score _____			ECMC	1	2	3	4	5

New ED Expansion Under Construction

Future Parking Lot



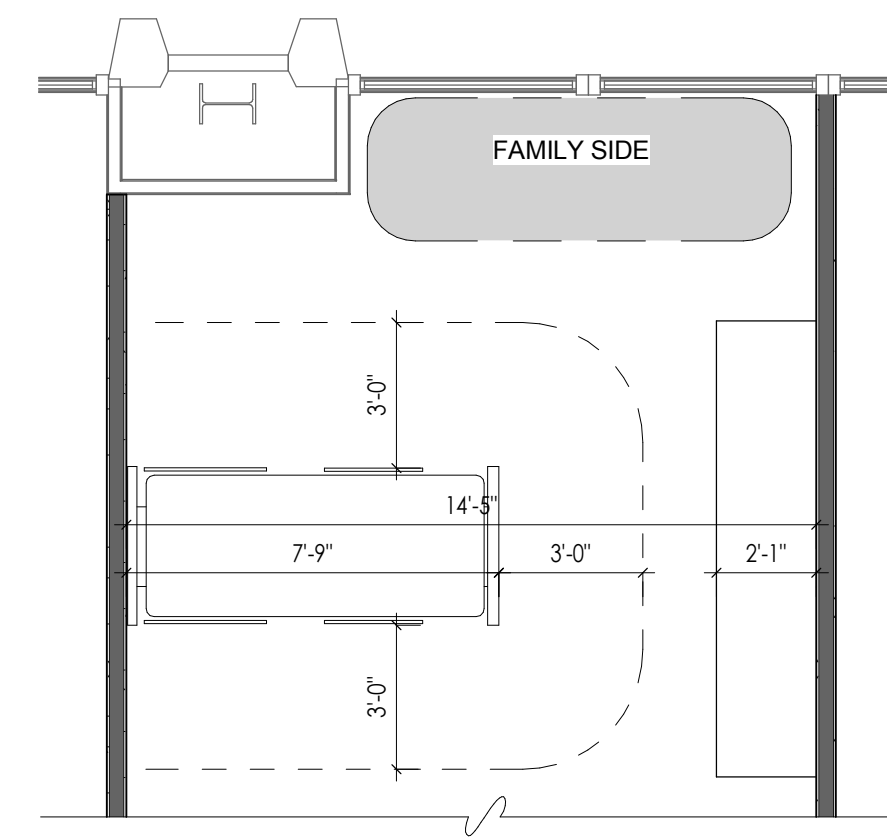
New ED Expansion Under Construction



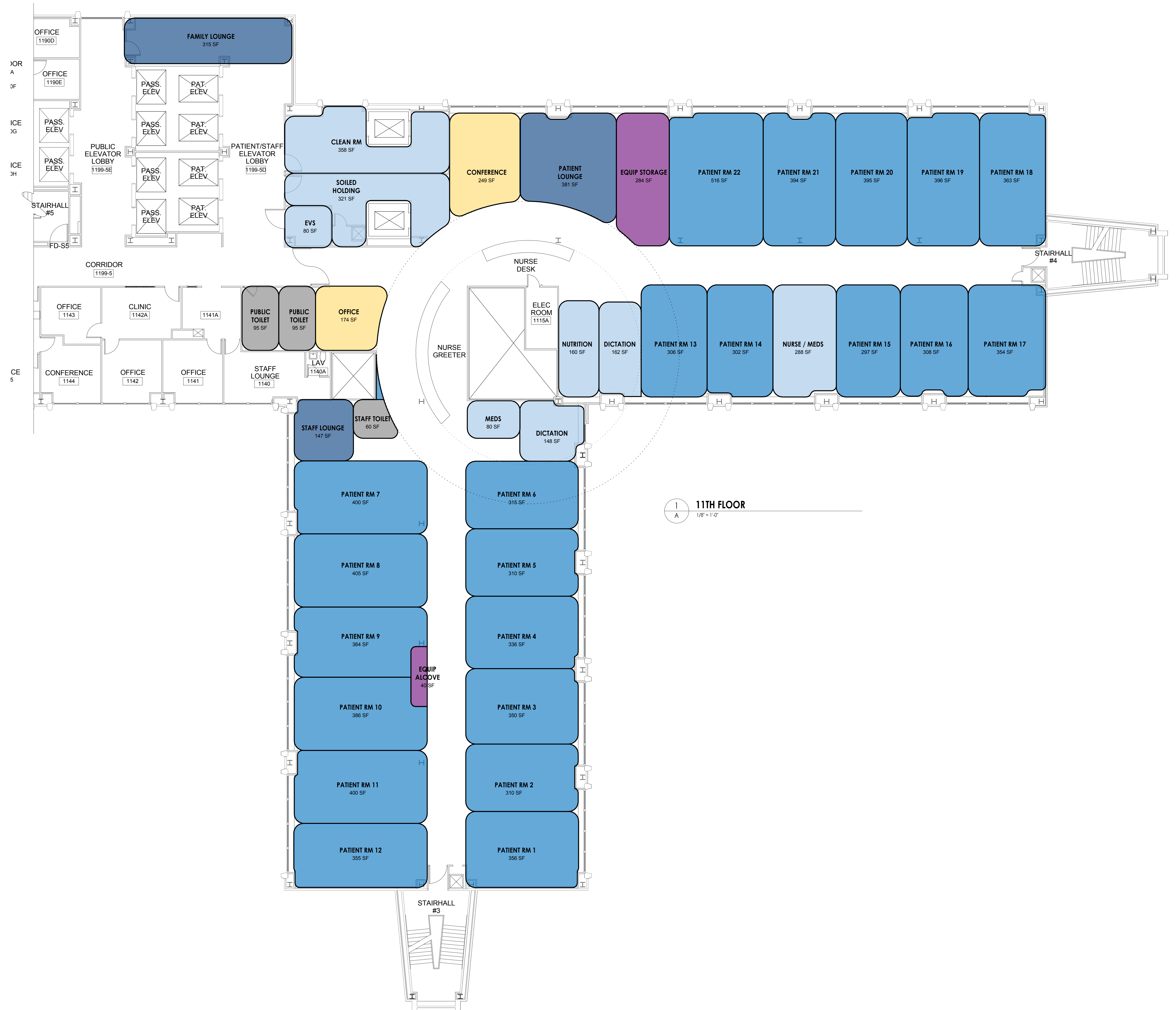
Concept OR Renovation Sketch

BUBBLE DIAGRAM KEY:

- LOUNGE SPACES
- PATIENT ROOMS
- STAFF / SUPPORT SPACES
- STORAGE
- OFFICE / CONFERENCE ROOMS
- TOILETS

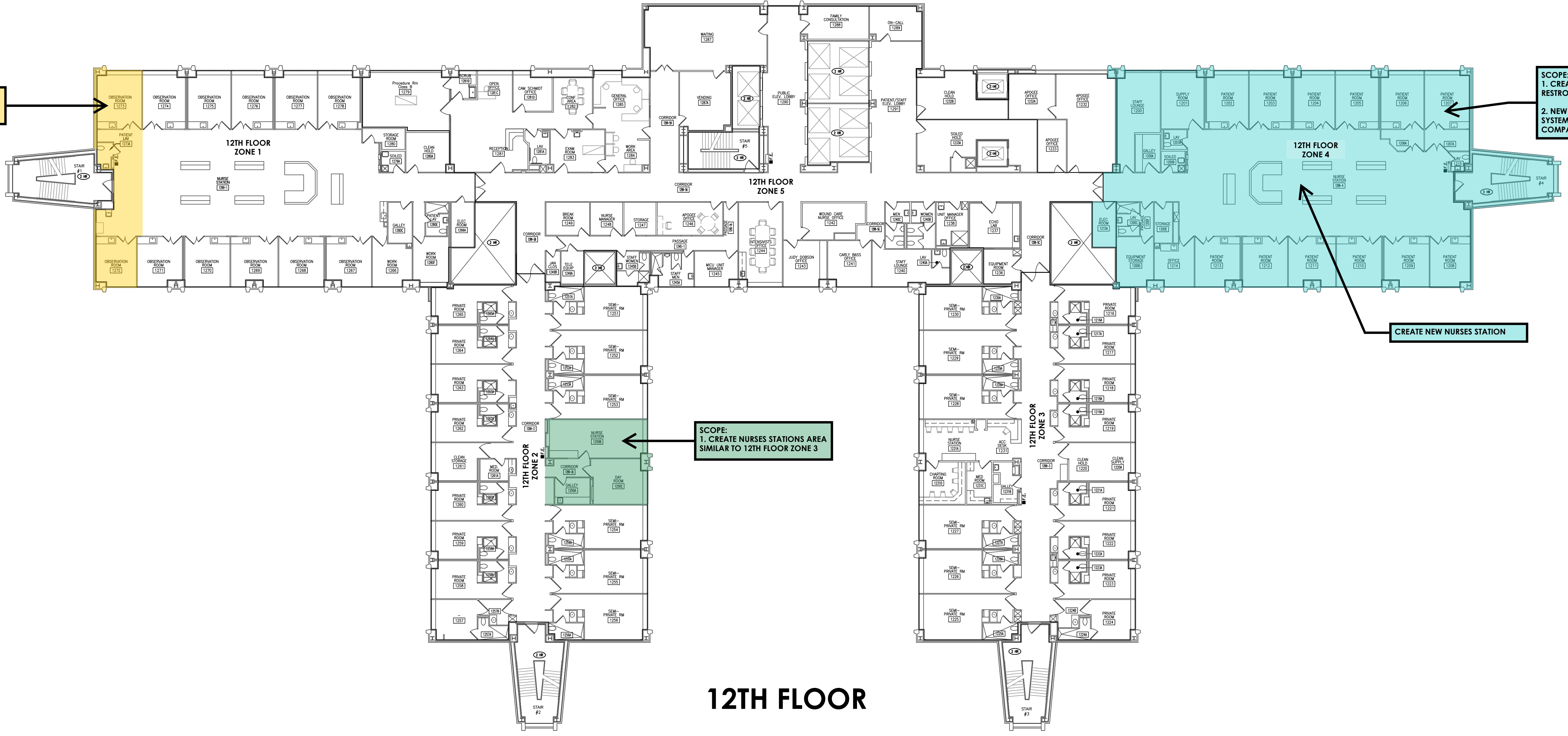


2
A
TYPICAL PATIENT ROOM
1/4" = 1'-0"



1
A
11TH FLOOR
1/8" = 1'-0"

SCOPE:
1. ADA COMPLIANT
RESTROOM WITH SHOWER



SCOPE:
1. CREATE (1) ADA COMPLIANT
RESTROOM WITH SHOWER
2. NEW SPRINKLERS AND CEILING
SYSTEM FOR THE ENTIRE SMOKE
COMPARTMENT. NEW FLOORING.

CREATE NEW NURSES STATION

SCOPE:
1. CREATE NURSES STATIONS AREA
SIMILAR TO 12TH FLOOR ZONE 3

12TH FLOOR

Appendix B

PROPOSING FIRM: _____ ECMCC RFP#: 21904

CONSTRUCTION MANAGEMENT SERVICES

PROPOSED COST & FEE STRUCTURE FOR:

MULTIPLE PROJECTS

Proposers are to establish their service fee percentage for the desired standard CM services (as specified earlier in this RFP) upon the total anticipated contract value / construction budget and reflect same in matrix spaces provided below. It is understood that the budget is based on current project programming and design and that related budgets shall be adjusted to varying degrees as the project further evolves.

Total Applicable Budget / Total Anticipated Contracted Value..... (SEE TABLE BELOW)

*** Please provide single Fee percentages (Fee submissions with a range will not be accepted)***

AIA A133 – 2009 / “Standard Form of Agreement Between Owner & Construction Manager as Constructor” (with GMP)						
PROJECT CONTRACTED VALUE	PRECONSTRUCTION PHASE			CONSTRUCTION PHASE		
	DPE	RE	% OF PRECON DPE FEE	% OF CONTRACTED VALUE DPE	RE	% OF CONTRACTED VALUE FEE
\$60,000,000 - \$70,000,000	TBD	TBD			TBD	

Appendix C

AIA[®] Document A201[™] - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

Erie County Medical Center Corporation
462 Grider Street
Buffalo, New York 14215

THE ARCHITECT:

(Name, legal status and address)

THE CONTRACTOR:

(Name, legal status and address)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.4.2, 13.7, 14.1, 15.2

Addenda

1.1.1, 3.11

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10,

11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,

4.2.7, 9.3.2, 13.5.1

Arbitration

8.3.1, 11.3.10, 13.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2,

9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,

13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,

4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,

9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,

7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,

13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5,

3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,

4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5,

15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1,

15.3.2, 15.4.1

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5

Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval
13.5.4

Certificates of Insurance
9.10.2, 11.1.3

Change Orders
1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

Change Orders, Definition of
7.2.1

CHANGES IN THE WORK
2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9

Claims, Definition of
15.1.1

CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**

Claims for Additional Time
3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, **15.1.5**

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration
15.3.1, 15.4.1

Cleaning Up
3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

Commencement of the Work, Definition of
8.1.2

Communications Facilitating Contract Administration
3.9.1, **4.2.4**

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND
9

Completion, Substantial
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Compliance with Laws
1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract
1.1.1, 6.1.1, 6.1.4

Consent, Written
3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder
15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, **6**

Construction Change Directive, Definition of
7.3.1

Construction Change Directives
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts
5.4, 14.2.2.2

Continuing Contract Performance
15.1.3

Contract, Definition of
1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 11.3.9, **14**

Contract Administration
3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of
1.1.1

Contract Sum
3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of
9.1

Contract Time
3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of
8.1.1

CONTRACTOR
3

Contractor, Definition of
3.1, **6.1.2**

Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.7

Costs

2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of **8.1.2**

Date of Substantial Completion, Definition of **8.1.3**

Day, Definition of **8.1.4**

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3, 2.4, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of 3.11

Effective Date of Insurance

8.2.2, 11.1.2

Emergencies

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5,
12.3, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials

10.2.4, 10.3

Identification of Subcontractors and Suppliers
5.2.1

Indemnification

3.17, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,
11.3.7

Information and Services Required of the Owner

2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,
15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

Instruments of Service, Definition of

1.1.7

Insurance

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**

Insurance, Boiler and Machinery

11.3.2

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 11.1.2

Insurance, Loss of Use

11.3.3

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, **11.3**

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

Interest

13.6

Interpretation

1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12, 15.1.4

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,
10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,
14, 15.2.8, 15.4

Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 13.7, 15.4.1.1

Limitations of Liability

2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,
4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3,
11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

Limitations of Time

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,
11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

Loss of Use Insurance

11.3.3

Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

Materials, Hazardous

10.2.4, 10.3

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13,
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,
9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 15.2.8

Mediation

8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1

Minor Changes in the Work

1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.3, 2.4, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Notice

2.2.1, 2.3, 2.4, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

Notice, Written

2.3, 2.4, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1

Notice of Claims

3.7.4, 10.2.8, **15.1.2**, 15.4

Notice of Testing and Inspections

13.5.1, 13.5.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.2.2, 9.6.6, 9.8, 11.3.1.5

Orders, Written

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Information and Services Required of the

2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority

1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1.4

Owner's Liability Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.4, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to

Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.3

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2

Ownership and Use of Drawings, Specifications

and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**, 11.3.1.5

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3, 13.7, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.7.4, 9.6.7, 9.10.3, **11.4**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.7.4, 9.6.7, 9.10.3, **11.4**

Permits, Fees, Notices and Compliance with Laws

2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION

OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.3**

PROTECTION OF PERSONS AND PROPERTY **10**

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work

3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, **3.12**, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, **3.12**, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of

1.1.6

Specifications

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, **11.3.7**

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,

7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

Suspension by the Owner for Convenience

14.3

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor

14.1, 15.1.6

Termination by the Owner for Cause

5.4.1.1, **14.2, 15.1.6**

Termination by the Owner for Convenience

14.4

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

TERMINATION OR SUSPENSION OF THE

CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2,

9.10.1, 10.3.2, 11.4.1, 12.2.1, **13.5**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3, 9.5.1, 9.7,**

10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,

5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5,

13.7, 14, 15.1.2, 15.4

Time Limits on Claims

3.7.4, 10.2.8, **13.7, 15.1.2**

Title to Work

9.3.2, 9.3.3

Transmission of Data in Digital Form

1.6

UNCOVERING AND CORRECTION OF

WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3.7**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

Weather Delays

15.1.5.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5,

9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7,

9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3, 14,**

15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1,

15.1.2

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.1 Certain portions of the Specifications are written in condensed outline form and omitted words are to be supplied by inference. Naming of an article or operation shall have the effect of stating, “Contractor shall furnish, install and complete” said operation or article unless it is further qualified in the context in which it appears.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.5.3 Should an inconsistency, conflict or ambiguity occur amongst the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written modification to this Agreement; (b) this Agreement; (c) drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) approval submittals; (e) information furnished by the Owner; (f) other documents listed in the Agreement. Among categories of documents having the same order of preference, the term or provision that includes the latest date shall control. Information identified in the Contract Document and not identified in another shall not be considered a conflict or inconsistency.

§ 1.5.4 Where figures are provided, they shall take preference over scaled dimensions.

§ 1.5.5 Should a conflict between the drawings and specifications arise, the specifications shall govern. In any case of omission or error in the figures, drawings or specifications, the Contractor shall immediately submit the matter to the Owner for clarification. The Owner’s clarification shall be final and binding on all parties. If applicable, such clarification may be subject to an equitable adjustment in Contract time or Price pursuant to Articles 7 or 8 or dispute resolution in accordance with Article 15.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one .pdf copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.2.6 The Owner shall forward any changes in the scope of work to the Contractor through the Architect. The Owner may at its discretion forward instructions directly to the Contractor as it relates to coordination of Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect

or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable under the Contract Documents.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Whenever the Drawings show existing construction, required as part of the Contract Work or not, it is understood that it is so shown as a matter of information and that the Owner, while believing such information to be substantially correct, assumes no responsibility therefore. The Contractor shall make himself totally familiar with all existing conditions affecting the nature and manner of conducting the work.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor. If Contractor fails to make such report, no excuse will thereafter be entertained for failure to carry out the work in a satisfactory manner. Should conflict occur within or between Contractor Documents, the Contractor is deemed to have estimated the greater quantity, better quality, or the more expensive way of doing the work, unless he shall have asked for and obtained written decision before submission of Bid Proposal as to which method or materials will be required.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations-Whether or not an error is believed to exist, deviations from the Documents shall be made only after approval in writing is obtained from the Architect. Any work performed after such discovery without the approval of the Architect shall be at the Contractor’s risk and expense.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures, unless Contractor is negligent in its performance.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 After the Contract has been executed, the Owner and Architect will consider a formal request via Change Order or Construction Change Directive for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the specifications). No requests for substitutions will be considered unless the Architect or Owner determines that such substitution is in the best interest of the Owner.

By making requests for substitutions, the Contractor:

1. Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
2. Represents that the Contractor will provide a warranty for the substitution at least as favorable to the Owner as that the Contractor would for that specified;
3. Certifies that the cost data presented is complete and includes all related costs under the Contract except the Architect's redesign costs and waives all claims for additional costs related to the substitution which may subsequently become apparent; and
4. Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the

Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This Warranty is not limited by the provisions of Paragraph 12.2.

§ 3.6 TAXES

§ 3.6.1

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.1

The Owner is an exempt organization under the New York Tax Law and is exempt from the payment of Sales and Compensating Use Taxes of the State of New York and cities and counties of the State on all materials sold to the Owner pursuant to the provisions of the Contract Documents. These taxes are not to be included in bids.

.1 Section 115(a)(15) of the Tax Law provides that tangible property sold to a Contractor for use in erecting a structure or building for an exempt organization is exempt from the Sales and Compensating Use Tax of the State of New York and cities and counties of the State provided such tangible personal property is to become an integral component part of such structure, building or real property.

.2 There is no exemption from the Sales or Use Tax on sales or charges to Contractor or subcontractors for the purchase or lease of supplies, machinery, equipment, tools, services, etc. used or consumed by them in the completion of the Project. The Contractor and subcontractors shall be responsible for and pay any and all applicable taxes including Sales and Compensating Use Taxes on such items.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the

Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Owner or Architect requires additional time to review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without following the objection process described in Section 3.9.2.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's approval, which shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and, if directed, the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The Contractor shall cooperate with the Owner in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other contractors or the construction or operations of the Owner's own forces.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or

certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend, indemnify, and hold harmless Owner and Architect from all suits or claims for infringement of copyrights and patent rights and from any and all claims, demands, liabilities, penalties, losses, costs, damages and expenses whatsoever for patent fees, royalties, or otherwise on account of any inventions, machine, article, process or arrangement that may be used by the Contractor in the construction of the Work, and all actions arising out of the same, and any reasonable attorneys' fees and expenses of all kinds whatsoever in connection therewith, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect. In the event of any injunction or legal action serving to stop the Work due to the fault of the Contractor, the Owner may substitute such other articles of like kind and/or

directing Contractor to change the manner of performance of this contract in order to facilitate completion of the Work, and all cost and expense occasioned thereby shall be borne by the Contractor.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall defend, indemnify and hold harmless the Owner (including all of Owner's affiliated entities and their directors, officers, agents and employees), Architect, Architect's consultants, and agents and employees of any of them from and against actions, claims, demands, liabilities, penalties, damages, losses, costs and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work or failure to perform the Work by the Contractor or its subcontractors, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). This provision does not obligate the Contractor to indemnify the Owner for negligence or breach of duty by the Owner. In the event liability is shared by the parties to this Agreement, the Contractor shall continue to remain obligated to provide reimbursement to Owner for the cost of defense of such claims, but shall only contribute as indemnity in the amount of its proportionate share for all actions, claims, liability, damages, losses, expenses or judgments. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

.1 The Contractor hereby assumes entire responsibility for any and all damage or injury of any kind or nature to property, including adjoining property (including loss of use thereof), arising out of the Contractor's or its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, performance or execution of the Work occurring in connection therewith, and the Contractor agrees to defend, indemnify and hold harmless the Owner (including all of Owner's affiliated entities and their directors, officers, agents and employees) from and against damages or injury to such property, however such damages or injury may be caused, to the extent such claims, liabilities, damages, loss or expense arise from or are caused directly or indirectly by the negligence of the Contractor, its subcontractors or any sub-subcontractors, or the agents or employees of either of them, in the performance of or failure to perform the Work, or the use by the Contractor, any subcontractor or any sub-subcontractor, or the agents or employees of either of them, of any materials, tools, hoists, ladders, implements, appliances, scaffolding, ways, works, machinery or other property. The Contractor shall be solely responsible for the safety of its Work and all equipment and materials to be used therein until final completion and acceptance of the same and shall promptly at its own expense repair any damage or injury to same.

.2 The Contractor specifically agrees to defend, indemnify and hold harmless the Owner (including all of the Owner's affiliated entities and their directors, officers, agents and employees) as contemplated in the Omnibus Workers' Compensation Reform Act of 1996, enacted on September 10, 1996, for any and all claims, demands, liabilities, penalties, losses, costs, damages and expenses whatsoever arising from injury to or death of any employee, representative, agent or invitee of Contractor, however such damages or injury may be caused, to the extent such claims, liabilities, damages, loss or expense arise from or are caused directly or indirectly by the negligence of the Contractor, its subcontractors or any sub-subcontractors, or the agents or employees of either of them, in the performance of or failure to perform the Work, or the use by the Contractor, any subcontractor or any sub-subcontractor, or the agents or employees of either of them, of any materials, tools, hoists, ladders, implements, appliances, scaffolding, ways, works, machinery or other property.

.3 It is further agreed that, if the Contractor subcontracts or delegates to others the Work or any part thereof, the Contractor will have the subcontractors and sub-subcontractors and/or delegates agree in writing to indemnify and name the Owner as additional insured (including all of the Owner's affiliated entities and their directors, officers, agents and employees), in the same manner as the Contractor has agreed to indemnify and name the Owner as additional insured (including all of the Owner's affiliated entities and their directors, officers, agents and employees) under this Agreement and shall deliver a true copy of said Agreement to the Owner. In the absence of such agreement or the delivery of the same prior to the subcontractor, sub-subcontractor's and/or delegates commencing their work, the Contractor will be held liable to indemnify and insure the Owner (including all of the Owner's affiliated entities and their directors, officers, agent and employees) in the same manner and to the same extent that the subcontractor, sub-subcontractor and/or delegates would have been

required to indemnify and insure the Owner (including all of the Owner's affiliated entities and their directors, officers, agent and employees) as if such agreement had been made.

.4 The Contractor's indemnification obligations hereunder apply to any type of damages, compensation or benefits payable by or for the Contractor under Workers' Compensation Acts or other Employee Benefit Acts. The Contractor's indemnification obligations also apply to any claim asserted against the Owner (including all of the Owner's affiliated entities and their directors, officers, agents and employees) of the Project in actions brought by injured employees of the Contractor (or the spouse, children, dependents or heirs of such employees) or his subcontractors or sub-subcontractors against the Owner (including all of the Owner's affiliated entities and their directors, officers, agents and employees). The Contractor agrees that all such liabilities and accompanying costs (including, but not limited to, reasonable attorneys' fees and disbursements) shall be borne by Contractor.

.5 The Contractor agrees, upon the request of the Owner (including all of the Owner's affiliated entities and their directors, officers, agent and employees) to assume the defense of any claim or lawsuit against any or all of them involving any claim covered by this Section 3.18 and to pay the amount of any judgment which may be entered against the Owner (including all of the Owner's affiliated entities and their directors, officers, agent and employees). Upon the failure of the Contractor to assume the defense of any such suit or upon a determination of the Owner to defend the same with separate counsel, the Contractor shall indemnify and hold harmless the Owner against all expenses, including reasonable attorneys' fees and disbursements, or such litigation.

.6 The Contractor also shall indemnify the Owner for any and all Contractor's obligations to municipalities, regulatory and governmental agencies and other such entities which arise out of or pertain to Contractor's performance of the work.

.7 The Contractor's requirements of indemnity under this Agreement shall be read cumulatively, and no paragraph of indemnity shall be read so as to restrict in any way any other paragraph of indemnity. The purpose of these indemnity paragraphs is to give the Owner (including all of the Owner's affiliated entities and their directors, officers, agent and employees) the greatest right of indemnity against the Contractor allowed by the law. The indemnity provided by the requirements contained herein shall be in addition to and not in limitation upon any rights of common law indemnity.

.8 If the obligations created in this Section 3.18 are made void or are otherwise impaired by any law or court decision, Contractor and Owner agree that the obligations of indemnity and defense shall be as broad as permitted by said law or court.

.9 Contractor and Owner acknowledge and agree that the rights and remedies created by this Section 3.18 are in addition to any right or remedy provided now or in the future by the common law or any statute.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Contractor shall endeavor to communicate directly with both Owner (including any specifically designated representative of Owner) and Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 The Contractor will maintain at the site for the Owner one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These will be available to Architect and will be delivered to the Owner upon completion of the Project.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or

entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. There shall be no increase in the Contract Sum, the Construction Cost or any other costs or expenses related to the Project without the prior written approval of the Owner, which may be withheld for any reason in their sole discretion.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In Subparagraph 7.3.7, the allowance for the combined overhead and profit shall be based on the following schedule for the Contractor, Subcontractor and Sub-Subcontractors of Subparagraphs 7.3.7.1 through 7.3.7.4.

1. The percentages for overhead and profit to be allowed for any work change involving added work shall be applied only to the net difference in cost as follows:
 - a. 10% of the direct cost of the change constitutes the total mark-up for overhead and profit by the Subcontractor and/or Sub-Subcontractor for the work performed by their own respective forces.
 - b. 5% of the direct cost of the change constitutes the total mark-up for overhead and profit by the Contractor and/or Subcontractor for the work performed by other than their own forces.
 - c. 15% of the direct cost of the change constitutes the total mark-up for overhead and profit by the Contractor for the work performed by its own forces.
 - d. All contractors shall not be allowed a mark-up on the mark-up received by a subordinate contractor.
2. The percentage for overhead and profit to be credited for the deletion of any work shall be as follows:
 - a. 5% of the direct cost of the change constitutes the credit for overhead and profit by the Subcontractor and/or Sub-Subcontractor for the work that would have been performed by their own respective forces.
 - b. 5% of the direct cost of the change constitutes the credit for overhead and profit by the Contractor and/or Subcontractor for the work that would have been performed by other than their own forces.
 - c. 5% of the direct cost of the change constitutes the credit for overhead and profit by the Contractor for the work that would have been performed by its own forces.
3. The allowable percentage for overhead and profit shall not be applicable to New York State sales or use tax.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3

[Intentionally omitted]

§ 8.2.4 Following authorization of the Contract by the Owner, written Notice to Proceed with the Work shall be given to the Contractor. The Contractor shall begin and shall prosecute the work regularly and uninterruptedly thereafter (unless otherwise directing in writing by the Owner) with such labor force as to secure the completion of the work within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under

Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives.

§ 9.3.1.1 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor agrees that prior to submitting an Application for Payment for Work, the Contractor has an affirmative duty to inform the Owner in writing whether there are any mechanic's liens, claims, security interests or encumbrances filed by or on behalf of the Contractor, subcontractor, sub-subcontractor, material supplier or other persons or entities providing labor, materials and equipment relating to the Work or anyone directly or indirectly employed by them or anyone for whose acts they may be liable; and further, the Owner shall require the Contractor to submit to the Owner and Architect a signed written affirmation at the time of each submission of an Application for Payment, which affirmation shall include the Contractor's agreement to indemnify the Owner and Architect against any such mechanic's liens, claims, security interest or encumbrances. The Contractor agrees to promptly report any such liens or encumbrances to the Owner and Architect.

§ 9.3.4 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 Architect and the Owner. Payment of such approved applications shall be made by the Owner within thirty (30) days after such approval has been given. Said payment will be ninety percent (90%) of the value based on contract prices of labor and materials incorporated in the work and of materials suitably stored at the site thereof up to the first day of that month as estimated by the Architect less the aggregate of previous payments. Upon substantial completion of the entire work as estimated by the Architect and approved by the Owner, the Contractor shall have delivered to the Architect, if so requested, satisfactory releases or waivers of all claims, liens and other persons, firms, associations or corporations who may have performed any labor or furnished any materials under or in connection with the performance of this agreement. Final payment shall be due forty-five (45) days after substantial completion of the work, provided the work be then fully completed and accepted by the Owner, and the contract fully performed and such releases and waivers have been delivered if so required.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that

the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will at his discretion, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted

Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can legally or practically occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), written certification by Contractor establishing payment or satisfaction of obligations, including without limitation receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, as determined by the Owner in its sole discretion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.1.8.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 [Intentionally omitted]

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 Before the Contractor commences any work under this agreement, the Contractor shall procure no later than fourteen (14) days after notice of an award, maintain without interruption for the duration of the contract, and provide to the Owner certificates of insurance and copies of the actual policies upon request evidencing the following coverages:

- .1 Workers' Compensation and Employers' Liability Insurance: As required by Statute and/or Regulation. Exclusions for the Proprietor/Partners/Executive Officers will not be permitted. Such insurance must include a waiver of subrogation in favor of the Owner.
- .2 Comprehensive Automobile Liability: Including owned, non-owned, leased and hired automobiles with a limit of not less than \$1,000,000, per accident combined single limit for bodily injury and property damage.

- 3 Commercial General Liability (CGL): Insurance for liability due to personal injury, bodily injury or property damage sustained or alleged to have been sustained by any person or entity, using GL policy form CG 000110 10/93 or its strict equivalent, which shall include, without limitation, premises, operations and mobile equipment liability, coverage for contractual liability, broad form property damage with completed operations, with the following limits:
 - (a) Comprehensive general liability including personal liability, bodily injury and property damage - \$1,000,000 per occurrence; \$2,000,000 aggregate per year
 - (b) Products and Completed Operations (to be maintained for at least 10 years following completion and acceptance of the Work) - \$1,000,000 per occurrence, \$2,000,000 aggregate per year
 - (c) Personal & Advertising Injury - \$1,000,000 per occurrence, \$2,000,000 aggregate per year
 - (d) Each Occurrence - \$1,000,000
- 4 Umbrella Liability: Applicable to all coverages required under this Section 11.1, with limits of not less than \$5,000,000.
- 5 Pollution Legal Liability. Any contractor performing environmental work shall have in effect Pollution Legal Liability or Contractors Site Pollution Liability insurance coverage with an insuring limit of no less than \$5,000,000 per claim and a \$5,000,000 aggregate.
- 6 All coverage shall be on an Occurrence Form and include Blanket Contractual Liability coverage. Claims-made coverage is not acceptable. General Aggregate limit must apply separately to each Project.
- 7 Builders Risk Insurance: Special Form will be maintained by the Contractor and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents. The insurance required by this Section 11.1.1.6 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment. This insurance shall be in an amount equal to the full insurable value at all times and shall be for the benefit of the Owner. The Named Insured shall read "Erie County Medical Center Corporation."

§ 11.1.3 All certificates of insurances shall be endorsed verbatim:

- 1 The Project shall be referenced as follows: "ECMCC Domestic Water Piping / Valve Replacement".
- 2 All liability policies (excluding Workers' Compensation and Professional) shall include the following as additional insured on a primary and non-contributing basis (CG2010 1185 or equivalent on general liability): Erie County Medical Center Corporation and all other parties required by written contract. A waiver of subrogation in favor of Erie County Medical Center Corporation and all other parties required by written contract applies to all policies.
- 3 "Acknowledgement: Insurance companies providing these coverages acknowledge that the named insured is entering into a contract with the Erie County Medical Center Corporation, in which the

named insured agrees to defend, hold harmless and indemnify the Erie County Medical Center Corporation, its officials, employees, Architect and all consultants, construction manager, and volunteers against all claims resulting from work performed, material handled and services rendered.

4. "Prior to non-renewal or cancellation of these policies, at least thirty (30) days advance written notice shall be given to the Erie County Medical Center Corporation's Officer of General Counsel, before such change shall be effective."

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 [INTENTIONALLY OMITTED]

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.5 All insurance procured in accordance with the Contract must be with insurance companies acceptable to the Owner.

§ 11.6 It is understood and agreed that the insurance coverage and limits, required below, shall not limit the extent of the Contractors and any Subcontractor's responsibilities and liabilities specified within the Contract Documents or by law.

§ 11.7 The Contractor shall maintain CGL coverage for itself and all additional insured for the duration of the Project and maintain completed operations coverage for itself and each additional insured for at least ten (10) years after completion of the Work.

§ 11.8 Should the Contractor engage a subcontractor or sub-contractor, the same conditions will apply under this contract to each sub-subcontractor. The Contractor shall be responsible for securing certificates of insurance and endorsements/policies where necessary from all subcontractors for insurance coverage limits not less than the limits indicated above and shall make such documents available to the Owner upon request.

§ 11.9 It is understood and agreed that the Owner may either terminate this Contract or withhold payments to the Contractor until properly executed certificates of insurance providing insurance as required herein are received by the Owner.

§ 11.10 If higher limits, broader provisions or other forms of insurance are required in the Contract Documents, the Contractor and subcontractors will comply with such requirements. If the Contractor fails to procure and maintain any insurance coverage required by this Agreement, the Owner may procure such insurance and charge the expense to the Contractor, or the Owner may terminate this Agreement. The Owner's failure to enforce any of the provisions of this Section shall not act as a waiver of the Contractor's obligation to procure the required insurance or as a waiver to enforcement of any of these provisions at a later date.

§ 11.11 Contractors' Safety: The Contractor and each subcontractor and sub-subcontractor shall be solely responsible for the safety of its Work and for the safety of its agents, employees, material men, subcontractors and any entity working on their behalf. The Contractor and each subcontractor and sub-subcontractor, their agents, employees, material men and subcontractors will perform all work on the Project in a safe and responsible manner. In particular, the Contractor and each subcontractor and sub-subcontractor shall, at their own expense, strictly adhere to all Federal (including but not limited to OSHA), State and Local safety and environmental standards, rules and regulations required or recommended by governmental and quasi-governmental authorities having jurisdiction. The

Contractor and each subcontractor and sub-subcontractor hereby acknowledge that they have their own safety program for all work covered by or performed under this Contract. The Contractor and each subcontractor and sub-subcontractor agree to conduct their own frequent and regular inspections of all work covered by or performed under this Contract at the project site to verify compliance with their safety program and all applicable safety standards, rules and regulations. The Contractor, each subcontractor, sub-subcontractor and Owner acknowledge and agree that the Owner has no control, responsibility or authority over the Contractor or each subcontractor or sub-subcontractor or their respective employees or subcontractors with regard to the safety and health conditions relating to or arising out of the Contractor's, subcontractor's or sub-subcontractor's work or the performance of any work covered by this Contract. The Contractor and each subcontractor and sub-subcontractor has the sole responsibility and authority for ensuring that any and all hazardous conditions relating to or arising out of their respective work under the Contract are correct. Contractor and each subcontractor and sub-subcontractor shall comply with said requirements, standards and regulations, and require and be directly responsible for compliance therewith on the part of its said agents, employees, material men and subcontractors; and shall directly receive, respond to, defend, and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its agents, employees, material men or subcontractors to so comply. The Owner reserves the right to withhold payments and/or terminate the Contractor's, subcontractor's or sub-subcontractor's performance of the Work should they not meet safety standards as required by law.

§11.12 The Contractor shall immediately notify the Owner of any accident or occurrence resulting in damage to property of another or injury to the Contractor's employees or to third parties. The Contractor shall submit to Owner a written report of the accident or occurrence on a form furnished by or acceptable to Owner. Upon request of the Owner, Contractor shall furnish Owner with a copy of any and all reports prepared by Contractor including those for submission to Contractor's insurance company(ies).

§11.13 Should the Contractor in any way cause damage to the Owner or in any way cause damage for which the Owner shall become liable, including fines, penalties or any fees associated therewith, the Contractor shall compensate Owner therefore. Contractor further agrees to defend, indemnify and hold harmless Owner and Project Developer for any and all claims, losses or damages incurred as a result of Contractor's noncompliance herewith.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to

notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so by executing a written document specifying acceptance without waiving additional rights instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. No party to the Contract shall assign the Contract in whole or in part without the prior written consent of the Owner, which may be withheld or delayed in the Owner's sole discretion. If any party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may freely assign any of the Contract Documents at any time in their sole discretion upon written notice to the Contractor and Architect; however, the Owner may, without consent of the Architect or Contractor, assign the Contract Documents to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Architect and Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from 30 days after the date payment is past due at the rate of 1% per annum.

§ 13.7 TIME LIMITS ON CLAIMS

§ 13.7.1 As between the Owner and Contractor:

- .1 As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

- 3 As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner immediately. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 Upon the Owner's prior written consent, which may be withheld in its sole discretion, an adjustment may be made for increases in cost and time caused by suspension, delay or interruption as described in Section 14.3.1.

Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. There shall be no increase in the Contract Sum, the

Construction Cost or any other costs or expenses related to the Project without the prior written approval of the Owner, which may be withheld for any reason in their sole discretion.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.5.3 There shall be no extension of Contract Time or any other required time for performance by the Architect, Contractor, subcontractor, or sub-subcontractor without the prior written approval of the Owner, which may be withheld for any reason in their sole discretion.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract.

§ 15.2 INITIAL DECISION

§ 15.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not effected. Upon receipt of such notice, senior executives of the Parties shall meet within five (5) business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in this agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Erie County, New York. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

ARTICLE 16 DISCRIMINATION

§16.1 In the hiring of employees for the performance of work under this contract or any subcontract hereunder, neither the Contractor, subcontractor or any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates. During the hiring of employees for the performance of work under this Contract or any subcontract hereunder, the Contractor and each subcontractor and sub-subcontractor agrees:

- .1 No contractor, subcontractor, nor any person acting on its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color or national origin.
- .2 This contract may be cancelled or terminated by the Owner and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.
- .3 The provisions of this Section 16.1 covering every contract for or on behalf of the Owner for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.
- .4 General Regulation No. 1 as issued by the State Commission Against Discrimination states: "It is hereby agreed by and between the parties hereto that every contractor and subcontractor engaged in the public work described in this contract shall post and maintain at each of his establishments and at all places at which the public work described hereunder is being conducted, the Notice of the State Commission Against Discrimination indicating the substantive provision of the Law Against Discrimination, where complaints may be filed, and other pertinent information. Such Notice shall be posted in easily accessible and well lighted places customarily frequented by employees and applicants for employment."
- .5 The provision of the State Law against Discrimination also prohibits discrimination in employment because of age.

ARTICLE 17 OWNER EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

§17.1 In the performance of work under this Contract or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor, or subcontractor, in their employment practices, shall by reason of race, color, national origin, sex, age, religion, marital status, or disability discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates. During the performance of this Contract or any subcontract hereunder, the Contractor and each subcontractor and sub-subcontractor agrees:

- .1 It will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, age, religion, marital status, or disability. The Contractor and each subcontractor and sub-subcontractor will take affirmative action to ensure the applicants are employed and employees are treated during employment, without regard to their race, color, national origin, sex, age, religion, marital status, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- .2 To appoint an Equal Employment Opportunity (EEO) officer whose function will be to assure that said Contractor and each subcontractor and sub-subcontractor participates fully and effectively in compliance with the requirements of this Contract.
- .3 To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the EEO officer setting forth the provisions of this non-discrimination clause.
- .4 To, in all solicitations or advertisements for employees placed by or on behalf of the Contractor and each subcontractor and sub-subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, sex, age, religion, marital status, or disability.
- .5 To send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the organization EEO officer, advising the labor union or workers' representative of the Contractor's, subcontractor's or sub-subcontractor's commitment under Executive Order No. 11246 on September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- .6 To comply with all provisions of Executive Order No. 11246 of September 24, 1965 and all relevant rules, regulations, and orders of an Erie County Medical Center Corporation (ECMCC) Contract and the Affirmative Action Program.
- .7 That in the event of the Contractor's, subcontractor's or sub-subcontractor's non-compliance with the nondiscrimination clauses of this Contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor, subcontractor or sub-subcontractor may be declared ineligible for further ECMCC contracts in accordance with the procedures authorized in Executive Order No. 11246 or as otherwise provided by law.
- .8 The Contractor and each subcontractor and sub-subcontractor will ensure the inclusion these Article 17 provisions in all related lower tier subcontracts and/or purchase orders unless specifically exempted by the rules, regulations or orders of an ECMCC contractual agreement, so that such provisions will be binding upon each subcontractor or vendor. The Contractor, subcontractor or sub-subcontractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Contractor, subcontractor or sub-subcontractor becomes involved in, or is threatened with litigation with any subcontractor or vendor as a result of such direction by the contracting agency, the Contractor, subcontractor, or sub-subcontractor may request ECMCC to enter into such litigations to protect the interests of ECMCC.

- .9 Acceptable achievement toward ECMCC's Minority and Female Employment Utilization Goal, relative to contracting are as follows:
- (a) Minority: minority labor hours as a percentage of total labor hours **13.2%**
 - (b) Female: female labor hours as a percentage of total labor hours **6.9%**
- .10 Monthly Employment Utilization Report. The Contractor by entering into a contractual agreement with ECMCC knowingly obligates itself and each of its lower tier Subcontractors to compliance with "ECMCC Equal Employment Opportunity Commitment" as defined herein. On a monthly basis, the Contractor and each of its lower tier Subcontractors shall submit a "Monthly Employment Utilization Report" which shall record their on-site labor force utilized on the applicable project for the preceding month period. This report itemizes on-site labor by racial groups, gender, trade group, grade classification, and including (a) the number of minority and female hours worked, and (b) the number of minority and female employees assigned to the project,. This report shall be submitted on the ECMCC standard "Monthly Employment Utilization Report" form found within Project Specification Manual for this Project.
- .11 With the exception of the first request, Monthly Employment Utilization Report(s) shall be attached to every payment application submission. Payment requests will not be reviewed unless all applicable employment utilization reports properly completed and attached.
- .12 Progress toward these goals shall be periodically monitored to ensure compliance. Insufficient progress toward these goals may result in direction to correct these deficiencies in succeeding periods. Should an organization be found to be unwilling to correct these deficiencies after prior notice, ECMCC shall maintain the right to:
- (a) Summon the non-compliant contractor or subcontractor to a hearing;
 - (b) Withhold progress payments in part or in full;
 - (c) Cancel the Contract; and/or
 - (d) Bar award of future contracts until the contractor demonstrates ability to comply.

§ 17.2 Per New York Executive Order Number 162, Contractor and any of its subcontractors shall also submit a monthly Workforce Employment Utilization Report reflecting the entirety of Contractor and its subcontractors' workforces assigned to work on this Contract and located in New York State, as well as the salaries of any employees assigned to work on this Contract.

ARTICLE 18 - OWNER MINORITY & WOMEN OWNED BUSINESS ENTERPRISE AND SERVICE-DISABLED VETERAN-OWNED BUSINESS REQUIREMENTS

§ 18.1 GENERAL

Contractor agrees to comply with New York State Executive Law Articles 15-A and 17-B and 5 NYCRR Parts 142-144 and 9 NYCRR Part 252 ("Diversity Laws") as set forth in the MWBE, SDVOB, and EEO requirements attached to IFB _____. Contractor agrees to comply with the MWBE and SDVOB Utilization Plans approved by ECMCC's Office of MWBE/SDVOB Compliance and submitted in response to the RFP. In the event that Contractor willfully and intentionally fails to comply with the Diversity Laws, the MWBE/SDVOB requirements, and/or the MWBE/SDVOB Utilization Plans, Contractor shall be obligated to pay liquidated damages, calculated as an amount equaling the difference between: (i) all sums identified for payment to MWBE/SDVOBs had Contractor achieved the MWBE/SDVOB goals; and (ii) all sums actually paid to MWBE/SDVOBs for work performed or materials supplied under this Agreement.

§18.2 MWBE/SDVOB MONTHLY UTILIZATION REPORT

Contractor must report on its to-date MWBE/SDVOB utilization progress. This reporting shall be accomplished through the Contractor's monthly submission of a properly executed MWBE/SDVOB Monthly Utilization Report.

With the exception of the first request, these monthly reports shall be attached to every payment application submission. Payment requests will not be reviewed unless both Utilization Reports are properly completed and attached.

Contractor must substantiate their past payments to their declared MWBE/SDVOB involvement. This shall be accomplished through the provision of photocopies of canceled checks or other method that has been previously approved in writing by Owner. Such substantiation shall accompany the typical MWBE/SDVOB Monthly Utilization Report submission, a dual part component of the routine monthly payment application process. This substantiation shall typically confirm the prior period's payments to applicable MWBE/SDVOB's. (*example – the Contractor's December payment submission shall include substantiation of the MWBE's November billings.*) Contractor must provide all other substantiations and reporting requirements as requested by Owner's Office of MWBE/SDVOB Compliance.

§18.3 WAIVER

Where it appears that the Contractor is unable to comply with the MWBE/SDVOB participation requirements, the Contractor may submit in writing for the Owner's consideration, the reasons for the Contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts taken by the Contractor to obtain the required MWBE/SDVOB participation pursuant to the provisions of New York State Executive Law Section 313 and MWBE/SDVOB Regulations.

§18.4 FAILURE TO COMPLY

In the event that a Contractor fails to comply with M/WBE or SDVOB provisions, Owner may:

- .1 Summon the non-compliant Contractor to a hearing.
- .2 Withhold progress payments in part or in full.
- .3 Subject Contractor to liquidated damages in accordance New York State regulations, which liquidated damages shall be calculated as an amount equaling the difference between: (A) all sums identified for payment to MWBEs or SDVOBs in the Contractor's Utilization Plan; and (B) the sums actually paid to MWBEs or SDVOBs for work performed or materials supplied under the Contract.
- .4 Terminate the Contract.
- .5 Bar award of future contracts until the Contractor demonstrates ability to comply.

§18.5 COMPLIANCE

The Contractor and all M/WBE and SDVOB Subcontractors are bound by all requirements as set forth in this specification and all modifications thereto contained in these Contract Documents.

ARTICLE 19 ACCOUNTABILITY

§19.1 The Contractor shall be fully accountable for its performance under the Contract Documents and agrees to answer under oath all questions relevant to the performance thereof and to any transaction, act, or omission had, done or omitted in connection therewith if called before any Judicial, County or State Officer or agency empowered to investigate the Contract or its performance.

ARTICLE 20 - WAGES AND LABOR CONDITIONS

§20.1 WORKING HOURS

No laborer, workman or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by this contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.

§20.2 WAGE RATES AND SUPPLEMENTS

Each laborer, workman or mechanic, employed by the Contractor, subcontractor or other person about or upon such public work, shall be paid not less than the prevailing rates of wages and shall be provided supplements not less than

the prevailing supplements, as determined by the Industrial Commissioner of the State of New York.

ARTICLE 21 - CREDENTIALING

§21.1 GENERAL

Contractor must comply with Owner's vendor credentialing requirements in order for its employees and subcontractors to be granted access to its facilities. All costs associated with Contractor's compliance with the vendor credentialing requirements will be borne solely by Contractor.

§21.2 SIGNATURE REQUIREMENT

At Owner's facilities, each of Contractor's employees will be given a badge which he or she must wear on full display at all times when at the facilities and be returned upon departure from the facilities.

§21.3 REMOVAL OF EMPLOYEE OR SUBCONTRACTOR

During the term of this Agreement, Owner may immediately remove any of Contractor's employees or subcontractors from Owner's facilities, if Owner believes, in its sole discretion, that such employee or subcontractor may (i) pose a risk to the health, safety or medical condition of any employee, patient or patron of Owner or (ii) interfere with the business or operations of Owner.

§21.4 AUDIT

During the term of this Agreement, Contractor will be subject to audit(s) to ensure its compliance with the credentialing requirements contained in this Agreement. Upon Contractor's failure to comply with any of these requirements, Owner may (i) terminate this Agreement or (ii) require Contractor to comply with more stringent credentialing requirements.

Appendix D

INSURANCE REQUIREMENTS

1. **Insurance to be Maintained By Contractor.** Prior to providing services under this Agreement, Contractor, at its own cost and expense, shall procure and maintain insurance for the coverages listed below, written for not less than the limits specified for each coverage or required by law, whichever is greater (except that if Contractor procures any policy limits greater than the amounts required herein, then the higher limits shall apply as though stated and required herein) and including the provisions enumerated below:

1.1 Professional Liability

Occurrence coverage	\$1,300,000 per occurrence
General Aggregate	\$3,900,000

Professional liability insurance coverage shall provide "occurrence" coverage; provided however if such coverage is "claims made" coverage, it must include tail coverage for at least two and one-half (2 ½) years after this Agreement terminates or expires.

1.2 Commercial General Liability

Bodily Injury and Property Damage Limit	\$1,000,000 each occurrence
Personal Injury Limit	\$1,000,000 each person
General Aggregate	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000

Coverage is to apply on an occurrence basis only. No endorsement or modification of this policy limiting the scope of coverage for Contractual Liability, Products/Completed Operations, Pollution or Personal Injury shall be permitted. In addition, no designated Premises/Operations limitation shall be permitted.

1.3 Automobile Liability

Owned, Hired and Non-Owned Autos

Combined Single Limit for Bodily Injury and Property Damage	\$1,000,000 each accident
---	---------------------------

1.4 Workers' Compensation & Employers' Liability and New York Disability Benefits

Statutory coverage complying with the law of each state in which Contractor's employees are headquartered, working, or domiciled with Employers' Liability limits of not less than \$1,000,000 Each Accident and \$1,000,000 Each Employee for Disease and \$1,000,000 Policy Limit for Disease, or the minimum level required by Contractor's Excess Umbrella Liability insurance company, whichever is greater and New York Disability Benefits Law.

1.5 Cyber Liability

Any contract awarded where electronic information/data, including Protected Health Information (as defined under HIPAA) is being exchanged between ECMCC and the Contractor or stored by Contractor on behalf of ECMCC will require cyber liability insurance as described below. In addition to the insurance below, the Contractor must demonstrate use of a secure server and password-protected email. In some circumstances coverage to include Internet Media Liability and/or Cyber Extortion Coverage, including Regulatory Proceeding and Breach Costs

Cyber Liability Insurance Limits	\$5,000,000 per claim
----------------------------------	-----------------------

1.6 Umbrella or Excess Follow Form

Combined Single Limit for Bodily Injury and Property Damage	\$5,000,000 each occurrence \$5,000,000 aggregate
---	--

Coverage is to apply on an occurrence basis only, shall be in excess of the other Liability coverages required in 1.1, 1.2, 1.3, 1.4 and 1.5 above and shall be no more restrictive than such scheduled underlying insurance.

NOTE: Any combination of primary and excess limits is acceptable as long as the total limits achieved are at least equal to the total limits achieved by the above described combination of primary and excess layers.

1.7 Pollution Legal Liability

Any contractor performing environmental work shall have in effect Pollution Legal Liability or Contractors Site Pollution Liability insurance coverage with an insuring limit of no less than \$5,000,000 per claim and a \$5,000,000 aggregate.

2. Additional insured and evidence of insurance.

2.1 Additional Insureds. ECMCC and its respective officers, employees and agents shall be named as Additional Insureds under the policies required in 1.2, 1.3, 1.5, 1.6, and 1.7 providing coverage for both ongoing and completed operations. The insurance protection afforded to ECMCC under such policies shall apply on a primary basis and any insurance (or self-insurance program) maintained by ECMCC shall not contribute with the insurance afforded to ECMCC as an Additional Insured.

2.2 Evidence of Insurance. Contractor shall deliver to ECMCC, prior to commencement of the work, Certificates of Insurance acceptable to ECMCC certifying that policies of insurance for the required coverages have been issued and are in effect and comply with the requirements herein. Upon expiration or cancellation of any policy during the period the coverages under such policy are required to be maintained, Contractor shall immediately deliver to ECMCC a Certificate of Insurance evidencing proper renewal or replacement of the policy.

2.2.1 Certificates evidencing Liability coverage under which ECMCC is required to be named as an Additional Insured must state that "Erie County Medical Center Corporation and its respective officers, employees and agents are included as Additional Insureds on a primary and non-contributory basis with respect to any other insurance or self-insurance programs afforded to, or maintained by, Erie County Medical Center Corporation." The certificate must specify the policies under which such Additional Insured status has been granted and a copy of the Additional Insured Endorsement(s) or Policy Provision(s) that grant(s) the required Additional Insured status must be attached to the certificate. A Waiver of Subrogation in favor of ECMCC shall also be included under the General Liability, Workers Compensation, Automobile and Umbrella Liability coverages and evidence on the certificate of insurance.

2.2.2 Certificates must specify the applicable retroactive date of any claims-made coverage being evidenced.

2.2.3 Failure of ECMCC to demand such Certificate of Insurance or failure of ECMCC to identify a deficiency in a certificate that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

2.2.4 ECMCC shall have the right, but not the obligation, to prohibit Contractor from providing services/products/equipment and/or entering the premises until such certificate(s) indicating full compliance with the requirements herein has been received and approved by ECMCC.

2.2.5 Certificates of Insurance shall be issued and sent to Erie County Medical Center

- 2.3 Failure to Secure and Maintain Insurance. Contractor acknowledges that failure to secure the above-specified insurance constitutes a material breach of this Agreement and subjects Contractor to liability for damages and all other legal remedies available to ECMCC. Contractor further acknowledges that procurement of the insurance coverage and limits required herein shall not limit the extent of Contractor's other responsibilities and liabilities specified within the Agreement between ECMCC and Contractor or by law.
- 2.4 Adequacy of Insurance. ECMCC does not in any way represent that the insurance specified herein, whether in scope of coverage or limits of coverage, is adequate or sufficient to protect the business or interest of Contractor.

3. Financial Rating of Insurers

The insurance companies providing the required coverages shall be licensed to do so in New York State, and shall be rated no lower than "A-" by the most recent Best's Key Rating Guide or Best's Agent's Guide, and shall have a Best's Financial Size Category of not less than VIII, unless otherwise agreed to by ECMCC.

4. Notice of Cancellation, etc.

Contractor is hereby obligated to e-mail or fax to ECMCC a copy of any cancellation or non-renewal notice received from the insurer for any policy affording the coverages required herein within five days of Contractor's receipt of same. Contractor further agrees to provide ECMCC with thirty (30) days advance written notice of cancellation, non-renewal or material reduction in coverage initiated by Contractor with respect to any of the required insurance coverages. For the purpose of this provision, material reduction in coverage shall mean any change or reduction in the scope of insurance coverage that adversely affects the protection that would otherwise be available to ECMCC.

5. Deductibles or Self-Insured Retentions

Deductibles or self-insured retentions shall be permitted with the understanding that Contractor (and not ECMCC) shall be responsible for such deductible or self-insured retention.

6. Cross liability

If the Contractor's liability policies do not contain the standard ISO separation of insureds provision, or an equivalent clause, such policies shall be endorsed to provide cross-liability coverage.

7. Claims-Made Coverage.

For any liability coverages maintained on a claims-made basis, the following provisions apply unless otherwise agreed to by ECMCC:

- 7.1 If the claims-made coverage terms designate a specific retroactive date, Contractor shall maintain a retroactive date which is not later than the earlier of (a) the date of the commencement of the term of this Agreement, or (b) the original coverage retroactive date for Contractor's first claims-made policy for each and every coverage provided on a claims-made basis;
- 7.2 For the duration of this Agreement, or any subsequent renewals, if the retroactive date is advanced or if the policy is materially changed, cancelled or not renewed, Contractor shall purchase, at its own expense, an extended reporting period endorsement. This endorsement must provide an extended reporting period ("tail" coverage) of three years or the minimum as prescribed by the Department of Financial Services of the State of New York, whichever is greater;
- 7.3 Upon termination of the services provided to ECMCC by Contractor, Contractor shall maintain such claims-made coverage without interruption for three (3) years or a period of

time equal to the length of any extended reporting period requirement as specified above, whichever is greater (the extended term of protection). If the retroactive date is advanced or if the policy is materially changed, cancelled or not renewed during this period of time, Contractor shall purchase, at its own expense, an extended reporting period endorsement covering a term of three (3) years or the minimum as prescribed by the Department of Financial Services of the State of New York, whichever is greater. It is understood that the length of this extended reporting period endorsement may be reduced to coincide with any time remaining in the extended term of protection.