

**Gowanus Canal Environmental Remediation Trust**

**TERMS AND CONDITIONS**

**FOR**

**PROFESSIONAL SERVICES AGREEMENT**

Gowanus Canal Superfund Site

Brooklyn, NY

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## ARTICLE 1 DEFINITIONS

For purposes of these Terms and Conditions, and as used in the Agreement incorporating these Terms and Conditions, the following commonly used terms, wherever used with initial capitalization, whether in the singular or the plural, are defined as follows:

- 1.1** “**Agreement**” means the form of agreement document executed by the Gowanus Canal Environmental Remediation Trust and the Consultant setting out, among other things, the Parties and the term. For the avoidance of doubt, a notification by the Trust to the Consultant of the award of a contract shall not constitute an Agreement and shall not create any contract between the Trust and the Consultant. For the further avoidance of doubt, where a work authorization and a formal form of agreement document are issued by the Trust, then the formal form of agreement document shall take precedence and no contract shall be formed until that form of agreement document has been executed by both Parties.
- 1.2** “**Applicable Law**” means all applicable laws, rules, regulations, requirements, orders, directives, ordinances, codes, authorizations, orders and standards of all federal, state, and local Governmental Authorities, including without limitation engineering, construction, environmental, safety, building, and electrical codes, regulations, standards and directives whether the same are in force at the execution of this Agreement or may in the future be passed, enacted or directed, including but not limited to, the Resource Conservation and Recovery Act, the Hazardous Materials and Transportation Act, OSHA, the New York Environmental Conservation Law, regulations of the EPA, the United States Department of Transportation and the New York Department of Environmental Conservation (when applicable for the jurisdiction).
- 1.3** “**Applicable Safety Standards**” means: (i) the safety and environmental standards, rules, regulations, directives, and procedures defined in the Contract Documents including, without limitation, those requirements as set forth in Article 21, the Scope of Services and in Exhibit E, and (ii) Applicable Law related to employee and public health, safety, and/or the environment including without limitation, compliance with the safety regulations and standards adopted under OSHA.
- 1.4** “**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act.
- 1.5** “**Change Order**” means an instrument executed by the Trust required to authorize any change in the Work which would result in: (i) a change in the basic character, design or scope of the Work, (ii) a deviation from standards established for the Work or any part thereof, (iii) an extension of the Schedule, or (iv) an increase or decrease in the Contract Price.
- 1.6** “**Concurrent Delay**” has the meaning assigned to it in Article 28.
- 1.7** “**Confidential Information**” has the meaning assigned to it in Article 30.
- 1.8** “**Consultant**” means the party identified on the first page of the Agreement and its officers, directors, employees, successors, assigns (if any are authorized by the Trust), servants, representatives and agents.
- 1.9** “**Consultant’s Representative**” means a person to be identified by Consultant to the Trust with authorization to act on behalf of Consultant and shall be the individual with whom the Trust may consult at all reasonable times, and whose instructions, requests, and decisions shall be binding upon Consultant as to all matters pertaining to this Agreement.
- 1.10** “**Consultant’s Retained Information**” has the meaning assigned to it in Article 15.
- 1.11** “**Contemplated Delay**” has the meaning assigned to it in Article 28.

- 1.12 “**Contract Documents**” means all documents listed in the Scope of Services, Work Authorizations, these Terms and Conditions, the exhibits to these Terms and Conditions and all documents identified as such in the Agreement. Said documents are incorporated by reference as if fully set forth in the Agreement.
- 1.13 “**Contract Price**” means the total amount to be paid by the Trust to the Consultant as set forth in the Agreement, including each applicable WA, and per Article 10.
- 1.14 Except where otherwise specified, “**Day**” means a calendar day, except that if an obligation of the Agreement falls due on a Saturday, Sunday or legal holiday in the jurisdiction where the Site is located such obligation shall be due the next regular business day or as provided by the Project Administrator.
- 1.15 “**Defective**” or “**Defect**” means Work, or any portion thereof, that do not conform to the Contract Documents.
- 1.16 “**Design Services**” means any and all services to be provided by Consultant requiring licensure pursuant to New York State Education Law, including without limitation the practice of architecture, engineering, surveying and other design professional services necessary for the performance of the Work.
- 1.17 “**Dollars**” and “**\$**” means United States of America dollars.
- 1.18 “**Effective Date**” means the date the Trust and Consultant made and entered into the Agreement.
- 1.19 “**EPA**” means the United States Environmental Protection Agency.
- 1.20 “**Force Majeure**” has the meaning assigned to it in Article 27.
- 1.21 “**Governmental Authorities**” means all federal, state and local entities, and all other governmental authorities, courts, regulatory authorities, public agencies, quasi-public agencies, utility companies, departments, bureaus and other parties with jurisdiction over the over the Trust, the Consultant , the Subcontractors, the Work or the Project.
- 1.22 “**Gowanus Canal Environmental Remediation Trust**” or “**Trust**” means the Environmental Remediation Trust established by a group of PRPs to perform certain Work for the Site under the supervision of EPA. As of the Effective Date of this Agreement, the Consultant acknowledges that it has been provided with a current list of the members of the Trust. The members of the Trust and/or list of PRPs may change, in the Trust’s sole discretion, over the course of the Project.
- 1.23 “**Indemnified Parties**” or “**Insured Parties**” or “**Additional Insured Parties**” means the Trust, Trustee, and grantors to the Trust, and grantors’ officers, directors, employees, agents, successors and assigns, all parties included in Exhibit G and any third party that Trust or grantors to the Trust are required to hold harmless or indemnify by law or pursuant to this Agreement and a contract or agreement for any property or access rights obtained in support of the Work.
- 1.24 “**Infringing Element**” has the meaning assigned to it in Article 15.
- 1.25 “**Milestone Dates**” means the dates for completion of the discrete portions of the Work as set forth in the Schedule.
- 1.26 “**Monthly Progress Reports**” has the meaning assigned to it in Article 7.
- 1.27 “**OSHA**” means the Occupational Safety and Health Act of 1970.

- 1.28** “**Partial Performance Payment**” means the payment to which the Consultant is entitled for Work actually performed after the Trust has provided Consultant with notice to commence Work and before the Trust terminates all or a portion of the Agreement for convenience.
- 1.29** “**Party**” means either the Trust or the Consultant, and any reference to “**Parties**” shall mean the Trust and the Consultant.
- 1.30** “**Professional of Record**” has the meaning assigned to it in Article 4.
- 1.31** “**Prohibited Act**” means:
- 1.31.1** offering, giving or agreeing to give to the Trust, any of its representatives, or any persons associated with it, any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Agreement or any other contract with the Trust or any of its affiliates; or (ii) for showing or not showing favor or disfavor to any person in relation to the Agreement or any other contract with the Trust or any the Trust’s other contractors;
- 1.31.2** entering into the Agreement or any other contract with the Trust, or any persons associated with the Trust or grantors to the Trust where a commission has been paid or has been agreed to be paid by the Consultant or on its behalf, or to its knowledge, unless, before the relevant contract is entered into, particulars of any such commission and of the Terms and Conditions of any such contract for the payment thereof have been disclosed in writing to the Trust;
- 1.31.3** defrauding, attempting to defraud or conspiring to defraud the Trust or any grantors to the Trust, or other Trust contractors.
- 1.32** “**Project**” means the totality of a Trust-defined investigative, assessment and/or remedial program, to be performed at a Site and completed within a specified time and cost, and all things associated therewith, of which the Work performed as specified in each relevant Work Authorization may be the whole or a part and which may include work performed by the Trust or by other consultants or contractors.
- 1.33** “**Project Administrator**” means the Trust’s representative(s) designated to direct, inspect and coordinate the performance and delivery of the Work.
- 1.34** “**PRPs**” means Potentially Responsible Parties as pursuant to Section 106 of CERCLA.
- 1.35** “**Prudent Industry Practice**” means, with performance of the Work, (with the exception of the Design Service, which are instead governed by the Standard of Care) the practices, methods, and acts engaged in or approved by a significant portion of the engineering and consultant industry of the United States that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, permits, the Contract Documents, reliability, safety, environmental protection, economy, and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is a spectrum of possible practices, methods, or acts employed by contractors, and having due regard for current editions of applicable design, safety, and maintenance codes and standards, manufacturers’ warranties and Applicable Law.
- 1.36** “**Schedule**” has the meaning assigned to it in Article 7.

- 1.37 “**Scope of Services**” or “**Scope of Work**” means the written requirements and procedures set forth in Exhibit A including any accompanying appendices and as may be supplemented, referenced or contained in a relevant Work Authorization.
- 1.38 “**Site**” means the geographical location where the Work will be performed as identified in the Scope of Work and the Work Authorizations.
- 1.39 “**Standard of Care**” means the level of skill, care, judgment and detail provided by professionals performing the same or similar services for projects of the same or similar size, complexity, technical innovation and design as the Project.
- 1.40 “**Subcontractor**” means any organization, firm or individual, regardless of tier, which the Consultant or its Subcontractor retains, pursuant to and during the term of the Agreement, to provide or actually provides, labor, materials, services and/or equipment at the Site or to deliver or actually delivers, materials, and/or equipment to the Site. Subcontractor includes its officers, directors, employees, successors, assigns, representatives and agents.
- 1.41 “**Submittals**” means any documents or instruments of any kind (including, without limitation, shop drawings, product data, reports and similar submittals) that are required under the Contract Documents to be delivered to the Trust (whether upon request or otherwise).
- 1.42 “**Suspension Notice**” has the meaning assigned to it in Article 24.
- 1.43 “**Term**” means the period of time to perform the Work specified in this Agreement and executed Work Authorization, as same may be amended from time to time and as further set forth in Section 2.1.
- 1.44 “**Termination Costs**” means: (1) reasonable, actual, and documented direct costs that are directly associated with termination responsibilities identified in Section 26.1; and (2) reasonable demobilization costs incurred within thirty (30) Days of the date of termination.
- 1.45 “**Trust’s Confidences**” has the meaning assigned to it in Article 12.
- 1.46 “**Trust’s Engineer**” means the engineers and consultants separately engaged by the Trust to furnish such services with respect to the Project as may be designated by the Trust in writing.
- 1.47 “**Work**” means all duties, responsibilities, obligations, including but not limited to technical and professional services, Design Services, field services, labor, equipment, materials, tools, supplies, supervision and all other tasks and deliverables defined in or as can be reasonably interpreted from each relevant Work Authorization, which the Consultant agrees to perform in accordance with the Agreement.
- 1.48 “**Work Authorization**” or “**WA**” means a document executed by Consultant and Trust, in the form set forth in Exhibit B that defines and authorizes the Work to be performed by the Consultant.
- 1.49 “**Work Product**” any and all products of the Work performed by Consultant, any Subcontractor and any of their employees under the Contract Documents, including but not limited to, all designs, inventions, discoveries, formulas, processes, devices, methods, compositions, compilations, outlines, notes, reports, system plans, flow charts, source code, and other forms of computer software including computer modeling, algorithms, procedures, policies, data, documentation, and other materials or information which Consultant, any Subcontractor or any of their employees may conceive, invent, author, create, reduce to practice, construct, compile, develop, or improve in the course of performing the Work or otherwise delivered to the Trust as part of the Work.



## **ARTICLE 2 TERM**

- 2.1** The Agreement and any WA issued thereunder shall become effective when executed by all Parties and shall continue in full force and effect indefinitely, unless terminated or canceled pursuant to the terms of this Agreement. Notwithstanding lapse of any Term, all representations, warranties, guarantees, liabilities and indemnities provided for by the Agreement shall remain in full force and effect until their stated expiration or by operation of Applicable Law, whichever is later.

## **ARTICLE 3 SCOPE OF SERVICES**

- 3.1** The Trust will authorize Consultant to perform Work described in the Scope of Work (**Exhibit A**) in phases pursuant WA's issued by the Trust and executed by Consultant. The Trust, at its discretion, may direct Consultant via WA to perform only a portion of the Scope of Work, and Consultant shall proceed with only that portion of the Work pursuant to the terms of such WA.
- 3.2** The Consultant agrees to furnish, perform and do all that is necessary to complete the Work identified in the Scope of Services, as well as any WA in accordance with the Contract Documents. The Consultant shall perform all Work required by the Contract Documents in a safe and workmanlike manner consistent with the Contract Documents, Standard of Care, Prudent Industry Practice, Applicable Law and the Schedule. The Consultant assumes full responsibility for the Work, and shall be solely responsible for all means, methods, techniques, sequences, procedures, safety and compliance programs in connection with the performance of the Work.
- 3.3** While the Parties' intent is not to create a fiduciary relationship, the relationship between the Trust and Consultant is one of trust and confidence, with the Trust relying upon Consultant for fair and honest, as well as experienced and competent judgments and opinions regarding all aspects of the Work. Consultant shall fully cooperate with the Trust, the Trust's Engineer, the Trust's agents and other contractors in furthering the interests of the Trust with respect to the Project. Consultant shall perform the Work in the most expeditious and economical manner consistent with good engineering practices.
- 3.4** Qualifications, exclusions and assumptions set forth in any document prepared by Consultant and incorporated into any WA by reference shall be limited to the scope of the Work and means and methods of performing the Work and shall not change the duties or obligations of Consultant under the Agreement. Unless the Trust specifically acknowledges and agrees to a qualification, exclusion or assumption by Change Order, such the qualification, exclusion or assumption shall be ineffective to modify the Agreement, whether or not the qualification, exclusion or assumption is physically stricken.
- 3.5** Consultant shall be responsible for the quality, completeness, accuracy, and coordination of documents provided pursuant to its Design Services. Consultant shall provide Design Services that conforms will all Applicable Law. Consultant shall coordinate all testing and inspections required by the Standard of Care and Governmental Authorities. Consultant hereby warrants that all Design Services shall be performed in accordance with the Standard of Care, Applicable Law, applicable permits, the applicable Schedule and all other requirements of the Contract Documents.
- 3.6** Consultant shall submit for the Trust review, with reasonable promptness and in such sequence as to cause no delay in the Work, all Submittals required by the Contract Documents. The Trust will review Submittals for general design features. The Consultant is responsible for confirming dimensions, quantities, accuracy, fit, adequacy of details, and coordination with other consultants and trades. By issuing Submittals to the Trust for review, Consultant represents to the Trust that it has checked the accuracy and coordinated the information contained within each Submittal with the requirements of the Work and of the Contract Documents; and that the Submittals comply with the Contract Documents. The Consultant must request deviations from Contract Documents in writing

and receive written approval from the Trust. No extension of time will be granted to the Consultant for the Trust's review of incomplete or inadequate Submittals.

- 3.7 The Trust reserves the right to delete, at any time and for any reason, portions of Work from this Contract and to perform such portions of the Work outside the scope of this Contract with its own forces or other contractors. In such instances, Consultant will provide the Trust with a deductive Change Order indicating the appropriate deduction in the Consultant's direct costs and indirect costs including its fee. In the event that the Trust deletes portions of the Work from this Contract due to Consultant's refusal or demonstrated inability to perform the Work, Consultant shall be responsible for the Trust's actual incremental cost to perform the deleted Work with its own forces or other contractors, including a fifteen percent (15%) administrative fee.

#### **ARTICLE 4 PERSONNEL**

- 4.1 At all times during the performance of the Work, Consultant shall engage a sufficient number of skilled professionals, workers, laborers, and other personnel necessary to perform and complete each part and portion of the Work in accordance with the Schedule. Consultant's failure to maintain an adequate or competent professional services or labor force shall constitute a material breach and an event of default by Consultant under this Agreement.
- 4.2 Consultant's Representative. The Consultant's Representative shall also have the responsibility to ensure that the Work being performed is in accordance with all provisions of the Contract Documents.
- 4.3 Professional of Record. The Consultant shall provide a Licensed Site Professional, New York State Professional Engineer or other licensed or registered environmental professional or engineer as required by the applicable state environmental regulations, and properly trained personnel, when required by Applicable Law or the Trust. This individual shall be the "LSP of Record", "Engineer of Record" or similarly titled professional (herein referred to as the "**Professional of Record**") for the Work with all the associated responsibilities and liabilities and will act independently, regardless of whether or not the Trust's representative on the Project is also licensed. The Trust will have no obligation as a "Professional of Record" or other design professional for the Work.
- 4.4 Other Key Personnel. The Consultant and all Subcontractors shall employ only competent and experienced personnel for the tasks they are performing. The Consultant's Representative, Professional of Record and other key personnel designated in any WA are considered to be essential to the Work in such WA. With respect to and for the duration of the Work to be performed by Consultant pursuant to any such WA(s), Consultant agrees not to remove, replace, or reassign key personnel without the Trust's prior written consent. If key personnel become unavailable for reasons beyond Consultant's control for assignment to Work under any applicable WA(s), Consultant shall immediately notify the Trust and shall submit information (including but not limited to proposed substitutions) in sufficient detail to permit the Trust to evaluate the impact of the situation on the Work to be performed. Prior to substitution of key personnel, Consultant shall obtain the Trust's written consent as to the acceptability of replacement personnel. Consultant shall exert its best efforts to promptly replace any key personnel to which the Trust reasonably objects in writing.
- 4.5 In the event that the Trust believes at any point in time, in its sole judgment, that any of the Consultant's personnel are unacceptable, the Trust shall so notify the Consultant, whereupon the Consultant shall promptly investigate and take appropriate corrective action including, where requested in writing by the Trust, removal of such personnel and replacement with personnel acceptable to the Trust.
- 4.6 The Consultant is responsible for assuring that any and all Consultant personnel and personnel engaged by or through Consultant have been properly trained and are fully qualified (in accordance with Applicable Law) to perform their respective duties as assigned by or through Consultant.

Consultant shall maintain appropriate records of the training and qualifications of its personnel assigned to work under the Agreement and shall assure that, as may be required under the law of any jurisdiction related to performance of any WA issued hereunder, such personnel possess any requisite licenses and/or certificates required or generally recognized as appropriate to performance of duties to which they are assigned. Nothing contained in this Section shall be deemed to relieve Consultant of its responsibilities under the Agreement, at law, or in equity, or to imply any approval by the Trust of Consultant's training or personnel qualifications standards or to make the Trust responsible for any act or omission of Consultant with respect thereto.

- 4.7 The Consultant and all Subcontractors shall have full responsibility for all employees employed on or in connection with the Project and shall employ only such employees who shall cooperate with all other individuals working at the Site.
- 4.8 The Consultant shall, and require its Subcontractors, to comply with the background check requirements provided as **Exhibit F**.

## **ARTICLE 5 FAMILIARITY WITH THE WORK**

- 5.1 The Consultant, by countersigning the Agreement and each WA, represents that:
- 5.1.1 it has fully acquainted itself with, and has carefully reviewed: (a) all documents provided or reasonably made known and available by the Trust (which may be relied upon as complete and accurate); (b) general known conditions relevant to the Work and the Project based on the Trust-provided information; (c) all relevant plans, surveys, measurements, dimensions, calculations, and estimates provided by the Trust; (d) the general nature and location of the Work and the Project; (e) the character of equipment, materials and facilities needed preliminary to and during the prosecution of the Work; (f) the general and local conditions (including known environmental conditions provided by the Trust and labor relations); and all other reasonably ascertainable matters which can in any way affect the Work and its cost pursuant to the Agreement;
- 5.1.2 it has all the Trust-provided information and documentation with respect to equipment, materials, facilities or any other matters which are or will be necessary to enable the Consultant to safely and reliably perform the Work related to the Scope of Work or WA.
- 5.1.3 it is unaware of any material errors or inaccuracies in such information or the WA,
- 5.1.4 it understands the known and potential hazards and risks present at the Site and shall inform its employees, agents, Subcontractors and third parties, prior to allowing access to the Site, of the nature and extent of the health and environmental risks associated therewith.
- 5.1.5 Consultant is ready, willing and able to properly complete the Work set forth in the Scope of Services or such WA for the Contract Price and in accordance with the Schedule.
- 5.2 Lack of knowledge of any of the foregoing matters shall not constitute an excuse or justification for delay or failure of performance under the Agreement, nor shall it justify any increase in the Contract Price as determined under the Agreement.
- 5.3 The Consultant shall notify all of its Subcontractors (of any tier) of the requirements of this Article and shall require them to make the same representations to the Consultant.

## **ARTICLE 6 CHANGES**

- 6.1 The Trust may at any time make additions to or deletions from or changes in the Project and/or Work, including changes to the Schedule. No additions to, deletions from, or alterations in the Work

and no amendment or repeal of, and no substitution for any terms, conditions, provisions or requirements of the Agreement shall be made unless first authorized in writing by the Trust. No oral changes in the Agreement shall be recognized by the Trust. All additional Work shall be performed in accordance with the terms and conditions of the Agreement insofar as they are applicable thereto.

- 6.2** The Trust and the Consultant shall negotiate in good faith to agree on the price for such ordered changes at the time of an issuance of a Trust-directed change. If, however, the Parties cannot agree on the adjustment to be made to the Contract Price, the Work or the Schedule as a result of such Change Order, then Consultant shall nevertheless proceed to execute the Work described in the Change Order promptly upon authorization from Trust, in which event the Trust the Consultant shall keep an accurate account of the cost and time spent on the Work in question. The Trust may in its sole discretion opt to make interim, conditional payments based on time and materials or any part thereof, pending final agreement or determination of the validity and price of any Consultant change claim. In no event shall negotiations under this Section impact the Schedule.
- 6.3** The Trust shall not accept any changes made by the Consultant pursuant to this Article 6 after final payment of each WA.
- 6.4** If the Trust authorizes a change in the Work which decreases the amount and cost of the Work, such decrease shall not constitute basis for a claim by the Consultant for any loss or damages including anticipated profit.
- 6.5** Without a Change Order, the Trust may order, or the Trust and Consultant may mutually agree in writing to make, changes in the Work which do not require an adjustment in the Contract Price or an extension of the Schedule.
- 6.6** Unless agreed by the Trust in writing, all requests for payments made pursuant to a Change Order shall be itemized separately in Consultant's invoice. All invoices covering additions or credits to the WA shall refer to the specific Change Order issued by the Trust with respect to the addition or credit and may not be honored unless this reference is included.

## **ARTICLE 7 PERFORMANCE AND SCHEDULE**

- 7.1** Time is of the essence for the completion of the Work under these Contract Documents. The Consultant shall develop, maintain, and update a fully integrated schedule of its Work for the Trust's approval. The Consultant's schedule for the Work, as applicable and upon approval by the Trust, shall be referred to as the "**Schedule**," and will include all activities required to accurately monitor, progress and use as a forecast tool, the Consultant's Scope of Work.
- 7.2** The Consultant shall perform the Work in accordance with the Schedule, as the same may be modified by WA or as otherwise agreed upon. The Consultant shall limit the Work at the Site to ten (10) hours per day and fifty (50) hours per week and normal working hours, between 7:00 a.m. - 6:00 p.m., Monday through Friday, unless otherwise specified in a WA or arranged for by Consultant. Arrangements for extended hours must be made by the Consultant through the local Governmental Authorities and shall be subject to the Trust's prior written approval.
- 7.3** The Consultant shall maintain a labor force of sufficient size and competence to conform to and complete all Work in accordance with the Schedule and within the scheduled hours and days set forth in the schedule unless otherwise directed or approved by the Trust.
- 7.4** Consultant shall submit updated scheduling and progress information on a continuing basis. Consultant shall deliver to the Trust no less frequently than monthly, by the tenth (10th) Day of each month, or on such other schedule as may be specified in the relevant WA, a written report, in a format acceptable to the Trust of the progress of the Work during the preceding month (each a "**Monthly Progress Report**") and on all matters deemed significant by the Trust. Such Monthly

Progress Reports shall include without limitation: (i) a detailed narrative of actual versus planned Work completed; (ii) a detailed cost summary by tasks as outlined in the applicable WA, showing actual expenditures versus authorized dollars, with an explanation of any cost variances; and the forecasted effects on the estimated cost at completion, if any; (iii) a description of major activities proposed for the next month; (iv) documentation of problems encountered; any existing or anticipated deviations from planned costs, schedule, or quality; and (v) an updated progress schedule. The Trust has the right to rely on all information provided by Consultant in its Monthly Progress Report. Comments in Consultant's Monthly Progress Report indicating additional Work or delays to the Schedule that Consultant believes are the Trust's responsibility shall not constitute notice by Consultant for such claims.

**7.5** During performance of the Work, Consultant shall attend and participate in all regularly scheduled meetings, teleconferences and other meetings as the Trust may request, so that the Consultant may update the Trust as to the progress of the Work, discuss and resolve commercial or technical issues, or to discuss any issue regarding the Project as deemed necessary by the Trust. The location and time of such meetings will be determined by the Trust, and may be held daily, weekly, monthly or as otherwise requested by the Trust. If requested by the Trust, the Consultant shall provide the Trust with minutes of any such progress meetings, and the Trust, with the reasonable agreement of Consultant, shall retain the right to amend the minutes. These meetings shall include discussion of action item lists that require action and effort by the responsible individual with deadlines for the completion of each item. All matters bearing on the progress and performance of the Work and the Schedule since the preceding progress meeting, including any open action items, shall be discussed and resolved, deficiencies in the Work or the methods being employed for the Work, and problems, difficulties, or delays which may be encountered. Consultant shall be represented by Consultant's Representative and the Trust shall be represented by the Project Administrator or other designee. The Trust shall have the right to include any individuals, contractors, consultants or attorneys in attendance at every meeting.

**7.6** **Schedule Recovery.** Time is material consideration as to performance by the Consultant of its obligations under the Agreement. Should any phase of the Work fall behind the Schedule plus authorized time extensions to such extent that the Milestone Dates may, as determined by the Trust, be at risk, Consultant shall submit a recovery plan to the Trust within five (5) Days that details the Consultant's plan to recover the Schedule. Should the Trust find that Consultant's proposed recovery plan is not sufficient to restore the Work to the Schedule, the Trust shall advise Consultant that Consultant has five (5) additional Days to submit an alternative recovery plan to recover the critical path.

**7.6.1.** **Trust's Right to Direct Recovery.** If Consultant has not corrected the Schedule problem or does not have a reasonably acceptable plan to correct the Schedule problem within ten (10) Days of the submission of the original recovery plan, the Trust shall have the right, in addition to its rights to deem such failure a material breach, to require the Consultant to immediately: (i) increase the number of its employees performing the affected Work; (ii) increase or change the amount of time or number of work shifts worked by the Consultant's employees and Subcontractors, including increasing the number of hours worked per day or the number of days worked per week; and/or (iii) increase or substitute other Consultant-provided resources, including hiring specialty Subcontractors, until the Work has recovered the Milestone Dates, or a plan for regaining the Schedule reasonably acceptable to the Trust is proposed by the Consultant or any combination thereof.

**7.6.2.** **Costs For Recovery.** All additional costs incurred by Consultant for providing acceleration in accordance with a Trust-approved recovery plan or as otherwise directed by the Trust shall be paid by Consultant, except to the extent that such acceleration costs are required to address a Contemplated Delay.

**7.6.3.** Trust's Remedies For Inadequate Schedule. If, after notice by the Trust, and opportunity to cure, Consultant does not prepare or update the Schedule pursuant to this Article, the Trust may use its own forces or another consultant to develop, maintain or manage the Schedule. Any costs incurred by the Trust based upon Consultant's failures under this Article may, at the Trust's discretion, be charged to Consultant including a fifteen percent (15%) markup. In such event, Consultant shall promptly provide the Trust and/or the Trust's other consultant with all information and data reasonably requested regarding the progress, requirements and other aspects of the Work, and shall otherwise cooperate with the Trust, at no cost to the Trust, as reasonably necessary or desirable for the timely and efficient preparation, review, maintenance and revision of the Schedule. Consultant shall be bound by such schedule as if it was prepared and maintained by Consultant pursuant to this Article.

**7.7** No extension of time for completion of the Work shall be granted to the Consultant except as provided in Article 28.

## **ARTICLE 8 DOCUMENTS**

**8.1** The Contract Documents may not be complete in every detail. The Consultant shall comply with their manifest intent and general purpose, taken as a whole, and shall not ignore or misuse any errors or omissions therein to the detriment of the Project.

**8.1.1.** Should the Consultant discover any conflicts, omissions, or errors in the Contract Documents, referenced documents, or codes, standards or instructions, the Consultant shall immediately upon its discovery request in writing an interpretation or clarification, or additional detailed instructions from the Trust before proceeding with the applicable Work; however, unless otherwise instructed, the more stringent requirement shall apply. The written request shall be given to the Trust's Project Administrator. The Trust, with the assistance of the Trust's Engineer, shall, within a reasonable time, issue in writing the interpretation, clarification or additional detailed instructions requested. Should the Consultant proceed with the applicable Work before receipt of the interpretation, clarification, or instructions from the Trust, the Consultant shall replace or adjust any Work not in conformance therewith and shall be solely responsible for any resultant damage or added cost.

**8.1.2.** In the event of any conflict between or among the Contract Documents, the following order of interpretation shall prevail: (a) the terms of a duly authorized and executed Change Order or WA with regard to the subject matter of the Change Order or WA (and in an amongst a Change Order and WA, the later executed document shall control); (b) the Agreement and Terms and Conditions (excluding the Exhibits); (c) the terms of the Scope of Work; (d) the terms of the remaining Exhibits. Furthermore, the several documents forming the Contract Documents shall be taken as mutually explanatory of one another; however, the Trust shall decide priority where there exists ambiguities, discrepancies, conflicts, or inconsistencies between or among respective Contract Documents of equal precedence.

**8.1.3.** If the Consultant observes that any requirement specified in the Agreement is at variance with any Applicable Law, permits or licenses it shall promptly notify the Project Administrator in writing before incurring any further liability, expense or obligation for the Consultant or the Trust.

**8.2** The Consultant shall supply all documents in quantities and types, at times, and according to instructions, pursuant to the relevant WA and in the manner set forth in the Agreement. Upon the Trust's request, any other documents prepared by the Consultant in connection with the Project shall



be delivered to the Trust upon completion of performance, postponement, cancellation or termination of the Agreement.

- 8.3** Any document which is prepared by the Consultant in connection with the Agreement shall be submitted in accordance with the Agreement documents as specified by the Trust, and with sufficient time for the Trust to review and comment. The Trust shall make reasonable efforts to provide consolidated comments respecting each matter or subject set forth in the document prepared by Consultant.
- 8.4** The Trust's review of or comments on any document shall not relieve the Consultant of its sole responsibility for the correctness and adequacy of the Consultant's Work, including but not limited to the correctness of design, detail, dimensions, compliance with regulatory requirements, or any other obligation of the Consultant hereunder.
- 8.5** All documents furnished by the Trust and documents produced by the Consultant for the Trust shall be used by the Consultant only for performance of the Project, shall not be used on any other jobs, shall not be delivered to any third parties except as is necessary for performance of the Project hereunder, and shall be returned to the Trust upon completion, cancellation or termination of the Agreement; except for the Consultant archive copies which shall be maintained in accordance with Article 34.
- 8.6** The Consultant shall deliver to the Trust an electronic (i.e. Adobe .pdf format) format or other electronic format acceptable to the Trust of all final reports, plans, specifications, or data generated under the Agreement

## **ARTICLE 9 CONTRACT PRICE**

- 9.1** The Trust will compensate the Consultant for Work provided on the basis of prices stated in the Agreement.
- 9.2** The Contract Price to be paid by the Trust to the Consultant, shall be the total cost of the Work and hourly services reasonably rendered and reimbursement for all expenses and disbursements reasonably incurred in connection with the performance of the Work as follows and to the extent expressly provided by the relevant WA.
- 9.2.1.** Unless otherwise set forth by the Parties, compensation to the Consultant for its performance shall be calculated by multiplying the labor rates for the consultant's billable personnel, in accordance with the rate sheet attached hereto and incorporated herein as Exhibit C, by the number of hours spent by Consultant's billable personnel directly performing the Work under any applicable WA(s) issued hereunder. The sum(s) so calculated shall be deemed to compensate Consultant fully and finally for all of its direct and indirect labor costs, overhead charges, general and administrative expenses, and profits, including but not limited to the following:
- a. charges associated with time of any and all of Consultant's executive, marketing, legal, financial, accounting, billing, and un-billable and un-applied management, and non-management personnel and functions;
  - b. home and branch office costs, including but not limited to, space, heat, light, water, local telephone and access charges, incoming facsimiles, in house personal and desk top computers, other utilities, and office supplies and equipment;
  - c. costs associated with social security, unemployment, real and personal property, and income taxes;

- d. sick leave, vacation, holiday allowances and all other employee benefits;
- e. Workers' compensation, property and casualty, professional liability (errors and omissions), and other insurance costs as required in Article 17 and **Exhibit D**; and
- f. any and all other out-of-pocket charges, costs, and expenses (including OSHA required training and medical monitoring), except as specifically set forth below in Section 9.2.2.

**9.2.2.** Compensation to the Consultant includes verifiable direct costs, without adders and/or markups of any kind, of reasonable, necessary, and proper out-of-pocket expenses actually incurred in connection with performance by Consultant of the Work authorized by the Trust pursuant to the performance of the Work including and limited to the following:

- a. reasonable travel (coach on airlines) and living expenses (including such per diem rate as may be provided in **Exhibit C**) on trips made with the Trust prior written approval (personal automobile reimbursement to be limited to and consistent with current IRS rate; automatically modified as per IRS publications)
- b. reproduction expenses connected with preparation of sets of reports, calculations, drawings, bills of material, and/or specifications (photocopies not to be reimbursed by more than 5 cents (\$0.05) per standard (11" x 17" or smaller) copy);
- c. fees, paid to Subcontractors, including but not limited to outside consultants, laboratories (only the Trust approved laboratories may be utilized), and/or vendors furnishing services or materials, engaged by the Consultant, with the Trust prior approval, to assist the Consultant in performing any of the Work called for under the Agreement and if directly for use in connection with the Agreement or any WA;
- d. long distance telephone charges reimbursed at cost, provided such costs are tracked by Consultant and verifiable by means of the Trust's audit;
- e. facsimile transmissions to be reimbursed at no more than fifty cents (\$0.50) per page for outgoing transmission (no reimbursement for incoming transmissions);
- f. postal and other carrier charges reimbursed at cost, provided costs are tracked by Consultant and verifiable by means of the Trust's audit;
- g. equipment (as per **Exhibit C**), outside printing charges, and miscellaneous materials reimbursed at cost as per **Exhibit C** attached and incorporated by reference hereto;
- h. permits, licenses (other than professional licenses), and other specific fees required for the Trust's specific WA only and paid by Consultant; and
- i. premiums applicable to any insurance in addition to that set forth in **Exhibit D** required by the Trust, or "bonds" required under Article 16, as applicable, in connection with any WA(s) issued hereunder.

**9.3** The rates as contained in **Exhibit C** represents the rates that Consultant shall maintain through the life of the Contract, subject to reasonable annual increases approved by the Trust. Such rates shall be used for calculating additive or deductive changes in accordance with Article 6. In the event of a Trust-approved change for work not contemplated or inferable by the Contract Documents for



which the pricing from **Exhibit C** is not applicable, as determined by the Trust, the Consultant shall provide new pricing for review and acceptance by the Trust. Consultant shall provide all information requested by the Trust to substantiate the value of the new pricing.

- 9.4** The Consultant shall make every effort to minimize Project costs; including, but not limited to, using electronic means of transmitting data, such as report drafts and initial lab results and minimizing the use of overnight mail when possible while not jeopardizing the schedule. In addition to all other cost-minimizing measures contained in the Agreement, the Consultant is encouraged to propose methods to reduce the estimated cost of the Work without impact on the quality of workmanship or other WA requirements.
- 9.5** Prices set forth herein shall not include any federal, state or local property, license, privilege, sales, excise, gross receipts, value-added or other similar taxes that may be applicable with respect to this Agreement or the Work. If a certificate of exemption or similar document is required to exempt the Work from sales or use tax liability, the Trust shall obtain and furnish to the Consultant evidence of such exemption in a form satisfactory to the applicable taxing authority. The Contract Price shall include sales, use and similar taxes on all equipment and materials unless otherwise provided for in the Agreement.
- 9.6** The Consultant shall pay or cause to be paid all taxes and employer contributions imposed by present and future federal, state, and local laws with respect to compensation of employees of the Consultant, and all interest and penalties payable under said laws as a result of noncompliance therewith. Consultant agrees to present, if so requested by the Trust, satisfactory evidence of payment of all such taxes and payroll deductions to the proper authorities.
- 9.6.1.** New York law provides a sales and use tax exemptions for certain types of machinery, equipment, materials, supplies and parts. When purchasing any machinery, equipment, materials, supplies and parts required to perform the Work, Consultant must provide reasonable advance notice to the Trust, and thereafter seek and obtain any applicable tax exemption as directed by the Trust. Consultant shall maintain all such tax exemption certificates in its files. Consultant shall not invoice the Trust for any New York sales and/or use tax for any machinery, equipment material, supplies or parts covered by such exemption certificate.
- 9.6.2.** The Consultant shall retain complete and accurate records of all taxes paid in connection with the Work. If the Trust establishes that the Work is exempt from any tax previously paid, the Consultant shall use its best efforts to assist the Trust in obtaining refunds on such previously paid taxes. This obligation shall survive the expiration or termination of this Agreement.

## **ARTICLE 10 PAYMENT**

- 10.1** Unless otherwise expressly provided in an individual WA and agreed to by Consultant, the Trust shall reimburse Consultant monthly in accordance with the provisions of the Agreement.
- 10.2** **Monthly Invoices.** The Consultant shall submit invoice(s) in accordance with the Agreement. Each invoice shall itemize by WA, and reference the Trust's WA number where applicable. Each invoice shall show and/or include:
- 10.2.1.** All compensation claimed which shall be categorized as agreed to by the Parties reflecting the completion of discrete events or tasks where applicable as follows:
- 10.2.1.1 the number of hours by task worked by each billable employee assigned to the Project, the applicable billing rate(s) for each such employee, total cost for each such employee by task;

- 10.2.1.2 Subcontractor invoices (of every tier), itemized by Subcontractor, and a detailed accounting of the work performed by each Subcontractor, the amounts owed to each Subcontractor, and percentage of Work completed; and
  - 10.2.1.3 any verifiable direct costs necessarily, reasonably, properly, and actually incurred by Consultant in connection with the relevant WA during the time period for which Consultant is entitled to reimbursement thereunder, and individually itemized.
- 10.2.2.** The following additional items if requested by the Trust:
- 10.2.2.1 Partial mechanics lien waivers executed by the Consultant, and (if requested by the Trust) its Subcontractors for the total amount of costs and fees invoiced, on the applicable form attached to **Exhibit H**;
  - 10.2.2.2 An accounting of any Work performed by any Subcontractor (of any tier) for which no payment has been made and the reasons for such non-payment;
- 10.2.3.** All supporting documentation to the reasonably required by Trust to verify the amounts requested and/or claimed by Consultant to Trust's reasonable satisfaction regarding Work performed by Consultant and its Subcontractors during the period covered by the applicable invoice in order.
- 10.3** Standard payment terms are net 60 Days. The Trust shall approve or disapprove all or a portion of Consultants' invoice within thirty (30) Days after receipt by the Trust of a proper invoice including required supporting documentation, and in so doing may contest, in good faith, all or any part of the charges set forth therein. On or before the thirtieth (30th) Day after the Trust determines the amount properly payable to Consultant for Work completed to the Trust's satisfaction, the Trust shall pay all approved amounts set forth in such invoice, less monies withheld by the Trust in accordance with this Agreement. Payment shall not relieve the Consultant from any responsibilities or obligations under the Agreement, nor shall the Trust's payment constitute acceptance or a waiver of any claim arising hereunder. No payment made hereunder shall be considered as acceptance of any Work. All payments shall be subject to correction or adjustment in subsequent payments.
- 10.4** Consultant's invoice(s) for any WA shall not exceed any maximum payment obligation of the Trust as may be set forth in the applicable WA, as the same may be amended pursuant to this Agreement.
- 10.5** Invoices shall be submitted in a timely manner. Invoices not submitted within six (6) months of completion of the Work billed shall be subject to a 10% reduction to the invoice amount.
- 10.6** Prior to final payment, the Trust may review the Work within thirty (30) days of receiving notice from Consultant that the Work has been completed.
- 10.6.1.** Should the Trust determine that the Work is Defective in any way, the Trust may so notify Consultant and its written notice will include a list of its objections. Consultant shall then correct such Defective Work to the Trust's satisfaction. These steps shall be repeated until the Trust determines that all Work is acceptable. The foregoing is without prejudice to any other remedies which the Trust may have hereunder with regard to Defective Work. Warranties and guarantees shall start anew respecting corrected Defective Work upon satisfactory completion thereof.
  - 10.6.2.** In the event that Consultant refuses or is unable to correct Defective Work in accordance with the Contract Documents, the Trust may correct such Defective Work with its own forces or other contractors. Consultant shall reimburse the Trust for any costs and expenses related to the correction of the Defective Work, including a fifteen percent (15%)

administrative fee. Correction of Defective Work under this Section shall not void or limit the warranties provided by Consultant under this Contract.

**10.7 Final Payment.**

**10.7.1.** Consultant shall submit a final invoice for the portion of the Contract Price not previously paid at Final Completion. Such final invoice shall include the following:

10.7.1.1 All documents required to be submitted with an invoice under Section 10.2;

10.7.1.2 Final mechanics lien waivers executed by the Consultant, and its Subcontractors (of every tier) for the total amount of costs and fees invoiced, on the applicable form attached to Exhibit H;

**10.7.2.** The making of final payment shall not constitute a waiver of any claims by the Trust, including, but not limited to, those arising from: unsettled Liens; or the terms of any warranties.

**10.7.3.** Acceptance of the final payment shall constitute a waiver of all claims for additional compensation by the Consultant for Work performed or losses incurred under the Contract Documents unless otherwise expressly agreed in writing by the Trust pursuant to a written request by Consultant to reserve a specific claim or claims made and granted prior to issuance of Final Payment.

**ARTICLE 11 WITHHOLDINGS**

**11.1** Notwithstanding any other provision of the Agreement, the Trust may with reasonable cause withhold or nullify the whole or part of any payment to such extent as may be reasonably necessary to protect itself from loss caused by Consultant's conduct, errors or omissions including, but not limited to:

11.1.1.1 Defective Work not remedied;

11.1.1.2 Claims filed or reasonable evidence indicating probable filing of claims against the Trust or by the Trust or other parties against the Consultant, except for any such claims that are defended and accepted without reservations by Consultant's insurance company and with coverage available in the full amount of such claim.;

11.1.1.3 Failure of Consultant or Subcontractors (of any tier) to make payments properly to Subcontractors (of any tier) or for material or labor or for any taxes due;

11.1.1.4 Damage to another contractor;

11.1.1.5 Damage to property arising from the performance of the Work or failure to perform the Work properly;

11.1.1.6 Removal and replacement of condemned Work and/or material;

11.1.1.7 Incomplete documentation;

11.1.1.8 Failure to submit documentation, data, or any other deliverable specifically required under the Agreement or as reasonably required by the Trust;

11.1.1.9 Inadequate or lapse of required insurance coverage;

- 11.1.1.10 Environmental damage caused by or exacerbated by Design Services or the performance of non-conforming Work by Consultant or any Subcontractor;
- 11.1.1.11 Bonding of a Consultant lien;
- 11.1.1.12 Disputed Work or other breach by Consultant of any of its material obligations under the Contract Documents, including the costs to the Trust of remedying the breach and all other costs directly attributable to other services that are required to be performed in connection with remedying such breach plus a fifteen percent (15%) markup;
- 11.1.1.13 Failure of the Consultant or any Subcontractors to properly clean up the Site;
- 11.1.1.14 Damage to utilities caused by Consultant's negligence or neglect;
- 11.1.1.15 Damage to public or private property;
- 11.1.1.16 Disputed costs from safety shutdowns caused by Consultant or any Subcontractor;
- 11.1.1.17 Unsubstantiated or unsupported amounts billed by Consultant, including the failure to provide the required supporting documentation as required by Article 10;
- 11.1.1.18 Consultant's failure to (i) provide required recovery plans, reports and updates as set forth in, or reasonably inferable from, Article 7, (ii) accelerate its Work, as required by Article 7, and/or (iii) provide updates to the Schedule;
- 11.1.1.19 Any delays caused by Consultant in the progress of the Work that delays or impacts the Trust; and
- 11.1.1.20 Any amounts due to the Trust under the terms of this Agreement.

- 11.2** When the above grounds are removed or the Consultant provides a surety bond satisfactory to the Trust which protects the Trust in the amount withheld, payment shall be made within thirty (30) Days thereafter to the Consultant for the amount withheld.

## **ARTICLE 12 REPRESENTATIONS AND WARRANTIES**

- 12.1** The Consultant represents and warrants to the Trust, and shall obtain similar representations and warranties from the appropriate Subcontractors that: (a) it is aware of the purpose for which its services are being used and that the Work shall be designed (as applicable) and executed in a manner timely and useful to said purpose; (b) all Work shall conform to the Contract Documents, and other requirements of the Agreement; (c) all professional services shall be performed by qualified and competent personnel in accordance with the Standards of Care, and whom currently possess and will maintain all necessary licenses, permits or other authorizations necessary; (d) all Work shall be of specified quality or, if not specified, of the best quality; (e) all Work furnished by or delivered through Consultant shall be free from faults and defects of any kind with respect to design(s) if and to the extent such design(s) has been furnished by or through Consultant; (f) all Work delivered by or through Consultant hereunder shall be free from defects in labor and material, that (g) any equipment utilized in connection with performance hereunder shall be safe and in proper working order; (h) all Work shall be performed in accordance with Prudent Industry Practices (or higher standards if specified in the Contract Documents) and Applicable Law. The Consultant shall ascertain and comply with the standard practices of the Trust as previously provided by the Trust prior to beginning to perform any Work under the Agreement.

- 12.2** Consultant understands and acknowledges that the Work performed hereunder may involve hazardous or toxic substance(s)/waste(s) and that such Work shall be performed in compliance with Applicable Law, policies of Governmental Authorities, and guidance documents related thereto. Consultant, by countersigning a WA, represents and warrants that it is experienced in the kind of Work contemplated, and technically, financially, and legally ready, willing, and able to perform Work set forth in such WA issued hereunder and that it is familiar with and knowledgeable about the Applicable Law, policies of Governmental Authorities, and guidance documents related thereto to the extent necessary to carry out its duties under any WA(s) issued hereunder in a professional, complete, and compliant manner.
- 12.3** Consultant represents and warrants that to the best of its knowledge and belief, neither entering into this Agreement nor performance of any of its obligations hereunder will conflict or cause a breach of any obligations of Consultant under any agreement, whether written or oral, to which Consultant is a party or any other obligation by which Consultant is bound. Prior to initiating any Work under this Agreement, Consultant shall undertake a comprehensive conflict of interest review to determine that it has no current or past obligation, direct or indirect that would conflict with the provision of Work or would otherwise hinder Consultant's zealous defense of its provision of the Work. Consultant shall inform the Trust in writing that such conflict check has been completed prior to execution of any WA.
- 12.3.1.** Until the completion of the Work, Consultant shall not directly or indirectly, provide work or services directly to, or be employed by: (i) the EPA, (ii) Jacobs Engineering Group, (iii) any upland property owner, (iv) any PRP in its individual capacity regarding work or services in or surrounding the Site, or (v) any other party that may give rise to a potential conflict with the Work provided under this Agreement or otherwise inhibit Consultant from properly performing the Work, unless prior written consent is obtained from the Trust, which consent shall not be unreasonably denied.
- 12.3.2.** In no event shall Consultant perform services for another party wherein Consultant shall describe the Trust's approach or mindset in how it deals with environmental issues or any other issue to another party (the "**Trust's Confidences**"). Consultant recognizes that such a disclosure of the Trust's Confidences may be an irreparable damage to the Trust and the Trust shall be entitled to seek injunctive relief to remedy such damage.
- 12.4** If the Consultant breaches any of the representations or warranties set forth above, or elsewhere in the Agreement, the Trust shall have available all rights and remedies under the Agreement, in addition to any rights and remedies that it may have under statute law, common law, in tort or contract, or in equity.
- 12.5** Notwithstanding any other provision of the Agreement, this Article shall survive the termination or expiration of the Agreement and shall survive delivery, inspection, tests, acceptance and use of the Work.

## **ARTICLE 13 LIABILITY AND INDEMNIFICATION**

- 13.1** To the extent directly caused by any negligent act or omission on the part of the Consultant or any Subcontractors or any person under their control causes, in whole or part: (a) any breach or claimed breach of the Agreement (including breach of any representation or warranty); (b) death or injury to any person, including but not limited to the Trust, an Indemnified Party or their respective affiliates, Consultant's employees, any Subcontractor (of any tier) or their employees; (c) any damage to, environmental contamination of, or destruction of any real or personal property, including but not limited to property of the Trust, an Indemnified Party or their respective affiliates, (d) any fine, payment or additional expense to be imposed upon or incurred by the Trust, an Indemnified Party or their respective affiliates; or (e) any natural resource damages; then to the fullest extent permitted by law, the Consultant shall be liable for any fines, payments, penalty, expenses, claims, suits,

actions, losses, settlement costs, demands, damages costs (including reasonable legal expenses), and any legal, accounting or other expenses incurred in investigating or defending any actions or threatened actions arising therefrom.

- 13.2** **General Indemnity:** To the fullest extent allowed by law, the Consultant shall indemnify, defend, and save harmless the Indemnified Parties from any loss, damage (including indirect, consequential, special, incidental, multiple or punitive damages), costs and expenses (including legal, accounting and consulting expenses), liability, cost, third party suit, charge, expense, or third party cause of action including reasonable legal expenses, whether unconditionally certain or otherwise, as they exist on the effective date of the Agreement or arise at any time thereafter, arising out of any damage or injury to property of an Indemnified Party, the Consultant and/or third parties (including real property, personal property and environmental damages), persons (including injuries resulting in death), or economic damages, directly or indirectly, to the extent caused by any of the following:
- 13.2.1.** any breach of the Agreement by Consultant;
  - 13.2.2.** any negligence, willful misconduct, or breach of Applicable Law of the Consultant or any Subcontractor;
  - 13.2.3.** any third party claim under U.S. law pertaining to libel, slander, defamation, invasion of privacy, piracy, or plagiarism arising from the Trust's use, consistent with the terms of the Agreement, of the final deliverables (except to the extent that such third party claim arises from materials supplied by the Trust, or any unauthorized modifications to the deliverables by the Trust),
  - 13.2.4.** any equipment, property or facilities used by the Consultant, its agents, employees, Subcontractors, and suppliers,
  - 13.2.5.** any defects, liens, encumbrances and claims of any kind levied upon equipment or materials furnished by the Consultant or its Subcontractors in connection with the Project, including attorney's fees incurred by Trust by reason of any such lien or claim,
  - 13.2.6.** any laborers', materialmen's, and mechanics' liens, claims, or encumbrances upon the real property upon which the Project or adjacent properties arising out of the Work, including attorney's fees incurred by Trust by reason of any such lien or claim;
  - 13.2.7.** interest and penalties payable under applicable tax laws as a result of Consultant's noncompliance therewith;
  - 13.2.8.** actions, proceedings, suits, demands, notices, orders, or threats thereof, brought issued, or made by any third party, including, but not limited to, any person, the EPA, any State Environmental Agency, or any citizens group;
  - 13.2.9.** the failure to obtain any legally required permits, consents, certificates, licenses or approvals or failure to give any required notices or failure to comply with any statutes, laws, ordinances, rules or regulations in performing its Work; or
  - 13.2.10.** the performance of any Prohibited Act by the Consultant, any Subcontractor, any of its or their affiliates, employees, officers, agents or shareholders, or any the Consultant personnel in connection with the Agreement, its subject matter or any agreements (including any sub-contracts of whatever tier) relating to the Agreement.
- 13.3** The Consultant shall take prompt action to defend and indemnify the Indemnified Parties against claims, actual or threatened, but in no event later than notice by the Trust to the Consultant of the service of a summons, complaint, petition or other service of process against the Trust alleging



damage, injury, liability, or expenses subject to the indemnification obligations set forth in this Article. If such claim is subject to the foregoing indemnity obligation, the Consultant shall defend any such claim or threatened claim, including as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim. The Consultant shall not settle any claim, action, suit or proceeding for which it is indemnifying the Trust in a manner that would impose any legal liability or financial obligation on the Trust without first obtaining the Trust's written consent.

- 13.4 The Trust may (at its own expense unless reimbursement is provided by Consultant's insurance) participate in the defense and retain its own counsel in connection with any claim. If the Consultant fails to assume control of the defense of any claim, the Trust may defend the claim at the Consultant's cost. The Trust's defense of a claim does not relieve the Consultant from its obligations to defend or indemnify.
- 13.5 **Workers' Compensation Waiver.** To the fullest extent permitted by Applicable Law, Consultant expressly: (1) waives the benefit, for itself and all Subcontractors insofar as the indemnification of Indemnified Parties is concerned, of the provisions of any applicable workers' compensation law limiting the tort or other liability of any employer on account of injuries to the employer's employees; and (2) assumes liability in accordance with this Article.
- 13.6 **Professional Liability.** Consultant shall provide the professional liability insurance required by this Agreement. Consultant agrees to the fullest extent permitted by law to indemnify and hold harmless the Trust, the Indemnified Parties against all losses arising from the negligent acts or omissions of Consultant in the performance of professional services under the Contract Documents, to the extent that Consultant is responsible for such losses on a comparative basis of fault and responsibility between Consultant and the Trust. Consultant shall not be obligated to indemnify the Trust or the Trust's Engineer for their respective negligence or misconduct.
- 13.7 **Patent, Copyright, and Trade Secret Indemnity.** Consultant warrants and represents that any material, apparatus, process, technology know-how, and the like or any part thereof used or installed pursuant to, or in connection with, the Contract Documents does not and will not violate or infringe any copyright, trademark, service mark, patent or invention, trade secret, or other intellectual process, technology, property, or proprietary right of any third party. Consultant agrees to indemnify, defend, and hold the Trust and any other Indemnified Party harmless from and against any and all losses that any Indemnified Party may hereafter suffer or pay out by reason of any infringement of a patent, trademark or copyright, or the misappropriation of any trade secret protected under the law based upon the Work designed or used by Consultant or any of its Subcontractors.
- 13.8 Consultant agrees to look solely to the Trust for the satisfaction of any right, remedy, or lien of Consultant, or for the collection of a judgment (or other judicial process) requiring the payment of money by the Trust, in the event of any liability by the Trust, and no other property or assets of any officer, member, manager, director, shareholder or principal of the Trust shall be subject to suit, levy, execution, attachment, or other enforcement procedure for the satisfaction of Consultant's rights or remedies under or with respect to (a) this Agreement, (b) the relationship of Consultant and the Trust hereunder, or (c) any other liability of the Trust to Consultant.
- 13.9 The obligations under this Article shall not be limited in any way by any limitation on the Consultant's insurance or by a limitation on the amount or type of damages. In addition, the obligations under Article 13 shall not be limited in any way by any compensation or benefits payable by or for the Consultant or any Subcontractor under worker's compensation acts, disability benefit acts or other employee acts.
- 13.10 Without limiting any other provision of this Article, the Consultant shall reimburse the Trust for the Trust's payment of any direct costs, penalties and/or fees pursuant to any order, decree, or other

legal instrument or process of any court, agency or other governmental entity which arises out of negligence, breach of warranty, or any other failure by the Consultant, or any person or firm engaged by or through the Consultant, to perform in accordance with the governing regulations, provision of the Agreement, or any WA issued thereunder.

- 13.11** Notwithstanding any other provision of the Agreement, this Article 13 shall survive the termination, cancellation, or expiration of the Agreement.

#### **ARTICLE 14 REMEDY**

- 14.1** Upon knowledge of an event of a representation or warranty breach or nonconformance, default, or defect, the Trust will within one (1) year after completion of the Work promptly notify the Consultant in writing identifying the issue; and with due attention to the Trust's requirements and needs, the Consultant shall promptly correct, to the Trust's satisfaction and at Consultant's sole cost and expense, the nonconformance or defect, together with any direct damage or loss to the Project resulting therefrom (including without limitation re-procurement or reconstruction occasioned thereby).
- 14.2** The Trust shall have the right at any time during the Term to review the Consultant's Work and to have the Consultant's Work reviewed by a third party. If, during the Term, the Trust notifies the Consultant promptly in writing that any part of the Work is defective or deficient or in default of any provision of the Agreement, the Trust may order the Consultant to stop performing the Work until such defect or default has been corrected at the Consultant's sole expense. The Consultant shall not be entitled to an extension of the schedule in the event of any such order to stop its work. If the Consultant does not correct the default or defect within ten (10) Days of notice, the Trust may suspend its performance until such defect or default is corrected and/or removed and replace the defective Work at the Consultant's expense.

#### **ARTICLE 15 INTELLECTUAL PROPERTY**

- 15.1** Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the Work shall be included in the Contract Price. The Consultant shall satisfy all demands that may be made at any time for such royalties or fees.
- 15.2** The Consultant shall supply all Work Product documents in quantities and types, at times, according to instructions, and in the manner set forth in the Agreement. Upon the Trust's request, all Work Product documents shall be delivered to the Trust upon completion, cancellation or termination of the Agreement.
- 15.3** Consultant retains the ownership of the Work Product, subject to the grant of rights to the Trust as set forth in this Article. Consultant agrees to disclose to the Trust the existence of any Work Product of which the Trust would not otherwise be aware promptly upon its creation.
- 15.4** Consultant grants the Trust, its successors, assigns and sub-licensees, during the full term of copyright or other intellectual property rights and any extensions under any copyright or other laws now or later in force, an exclusive, royalty-free, irrevocable, transferable, worldwide right, with the right to sub-license such rights, to use, reproduce, distribute, publicly display, create derivative works from and otherwise exploit the Work Product, as of the date of their creation, in connection with the design, construction, management and maintenance of the Project, and/or other purposes permitted by Applicable Law, in all media now known or hereafter developed. The foregoing grant of rights includes the Trust's right to use the Work Product for the completion of the Project by others and/or for modification of the Project. The Trust has the right to sue for any past, present or future infringement of the Work Product. The license set forth in this Section survives and remains in effect notwithstanding any termination or expiration of this Agreement, subject to the Trust's payment obligations under this Agreement.



- 15.5 Consultant further warrants and agrees to take, and Consultant agrees to cause Consultant's employees to take, such other actions as the Trust may reasonably request to perfect and protect the Trust's interest in any Work Product. Consultant further agrees that the sums paid to Consultant by the Trust in connection with Consultant's performance of the Work serve, in part, as full consideration for the foregoing assignment, and that said consideration is fair and reasonable, and was bargained for by Consultant. Consultant represents and warrants that it has full right, power and authority to grant the assignment granted under this Section.
- 15.6 **Consultant Retained Information.** The Trust acknowledges that Consultant may implement in the Work inventions, discoveries, formulas, processes, devices, methods, compositions, compilations, outlines, notes, reports, system plans, flow charts, source code, and other forms of computer software including computer modeling, algorithms, procedures, policies, data, documentation, and other materials or information that were developed or otherwise acquired by Consultant prior to the date of the Agreement and that are proprietary to Consultant ("**Consultant's Retained Information**"). Such Consultant's Retained Information are deemed excluded from the Work Product. Consultant shall identify such Consultant's Retained Information to the Trust in writing simultaneously with submission of any Work Product to the Trust. Consultant's failure to identify in writing any previously unidentified Consultant's Retained Information including within thirty (30) Days of issuance of the same by Consultant to the Trust shall be deemed a grant to the Trust and its affiliates of an irrevocable, perpetual, non-exclusive, royalty-free, world-wide license to: (i) use, reproduce, perform, and execute such Consultant's Retained Information; (ii) prepare derivative works based upon such Consultant's Retained Information; (iii) distribute copies of such Consultant's Retained Information and of derivative works based upon Consultant's Retained Information; and (iv) authorize others to do any of the foregoing.
- 15.7 **Knowledge.** Nothing in this Section should be construed to prohibit Consultant from using its skills, knowledge and experience that have a general applicability, including such skills, knowledge or experience gained by Consultant in connection with performing services for the Trust in performing services for other clients; provided, however, that Consultant's knowledge or use thereof shall not include any Confidential Information of the Trust.
- 15.8 If the Work, any intellectual property utilized by the Consultant in providing the Work, or the Trust's use of the Work (each an "**Infringing Element**") becomes the subject of any claim, suit, or proceeding for infringement or other intellectual property right violation, the Consultant shall, at its sole expense and at the Trust's option: 1) secure for the Trust the right to its continued use, 2) replace the Infringing Element with a substantially equivalent, non-infringing item, or 3) modify the Infringing Element so that it is noninfringing. If neither (1) nor (2), above, is practicable, accept a return of Work from the Trust and refund to the Trust any charges paid by the Trust therefor, other than charges for license for any actual period of use by the Trust and release the Trust from any further liability under the Agreement. The foregoing is without prejudice to any other right or remedy the Trust may have hereunder.
- 15.9 Consultant represents and warrants to the Trust that:
- 15.9.1. Consultant has the full power and authority to enter into this Agreement and perform its obligations hereunder;
- 15.9.2. Consultant owns or will acquire all right, title and interest in the Work Product;
- 15.9.3. Consultant has the right to grant the rights granted in this Article and has acquired all rights necessary to grant these rights to the Trust, and Consultant has not previously assigned, transferred or otherwise encumbered the same;
- 15.9.4. the Work Product is original, and does not violate or infringe any copyright, trademark, or other proprietary right of any third party;

- 15.9.5.** the Work Product does not contain any matter which violates any federal, state or local statute, regulation or ordinance, nor are they in any other manner unlawful; and
- 15.9.6.** there are no claims, litigations or other proceedings pending, outstanding, or threatened that may prejudice the Trust's rights under this Agreement; Consultant shall notify the Trust of any such third-party claim made against Consultant as soon as possible after obtaining knowledge of such claim.
- 15.10** Notwithstanding any other provision of this Agreement, in no event shall the Trust be liable to the Consultant for any charges after the date the Trust no longer uses the intellectual property utilized by the Consultant as a provision of Service because of any actual or claimed infringement.
- 15.11** The Consultant shall obtain from its Subcontractors, for the Trust's benefit, agreements similar to those contained in this Article.
- 15.12** Notwithstanding any other provision of the Agreement, this Article shall survive the termination or expiration of the Agreement.

## **ARTICLE 16 LIENS AND BONDS**

- 16.1** The Consultant shall to the full extent permitted by law, keep the real property upon which the Project is located property free and clear of all liens, claims, and encumbrances arising from the performance of the Agreement by the Consultant and Subcontractors.
- 16.2** Consultant agrees to apply all payments received from the Trust under this Agreement as required under Article 3-A of the Lien Law of the State of New York. The Consultant shall pay punctually for all services, labor, equipment and materials and all liabilities incurred by it in performance of the Agreement, and when requested shall furnish the Trust with satisfactory evidence of such payment.
- 16.3** Consultant shall furnish at its sole cost and expense, and shall obtain from each Subcontractor, a partial lien waiver and release substantially in the applicable form of **Exhibit H**, of all liens in the amount of the current invoice, (for the benefit of the Trust), for delivery to the Trust with each invoice, or such other documents necessary to ensure an effective release of all liens with respect to the Work in compliance with the laws of the State of New York. Except as contemplated in the preceding sentence, the Trust's receipt of lien waivers and releases for each portion of the Work covered by the applicable invoice shall be a condition precedent to the Trust's obligation to pay for such portion of the Work covered in any invoice. Consultant shall also furnish, at its sole cost and expense, a waiver and release of all liens upon final payment, substantially in the applicable form of **Exhibit H**, from Subcontractor upon completion of the Work to be performed by such Subcontractor, or such other documents necessary to ensure an effective release of liens with respect to the Site, in compliance with the laws of the State of New York. In connection with each payment request or invoice, the Consultant agrees to deliver to the Trust a partial waiver of lien (**Exhibit H**) executed by and for itself and its Subcontractors and suppliers and, at the time of Final Payment, final waiver and release of all claims (**Exhibit H**), which shall become effective as of the issuance of Final Payment to Consultant.
- 16.4** The Consultant shall give the Trust 20 Days written notice prior to filing a lien on any property associated with the Work and shall use all reasonable efforts to give the Trust 20 Days written notice prior to a Subcontractor or supplier filing a lien on such property.
- 16.5** If the Consultant places a lien on any property associated with the Work or fails to timely discharge a Subcontractor or supplier lien, the Trust shall have the right to bond such lien or take other action to remove same, and Consultant shall be liable to the Trust for all costs and legal expenses incurred by the Trust in discharging such liens, including cost of bonding same.

- 16.6** If a lien is placed on any property associated with the Work by any Subcontractor performing Consultant's Work on the Project, the Consultant shall discharge the lien within ten (10) Days, or such other time as agreed to by the Trust.
- 16.7** Notwithstanding anything in this Article and the Agreement to the contrary, Consultant shall have no obligation to indemnify the Trust and/or dissolve any lien that is the result of failure of the Trust to make undisputed payments to the Consultant when due in accordance with this Agreement.
- 16.8** The Trust reserves the right to require and to secure Consultant's performance and payment obligations hereunder by one or more bonds applicable to any WA(s) issued hereunder and shall give Consultant a minimum of ten (10) Days prior notice before the beginning of any WA that will require such bond. Any such bond(s) shall be from a surety and in form and content acceptable to the Trust. Copies of such bonds shall be furnished to the Trust and, upon written request, to all Subcontractors of any tier.

## **ARTICLE 17 INSURANCE**

- 17.1** Prior to commencing any Work under the Agreement and during the entire term of the Agreement, the Consultant, at its own cost and expense, shall procure and maintain, and shall require its Subcontractors to procure and maintain, insurance in form and amounts set forth in **Exhibit D**.
- 17.2** The Consultant shall be solely responsible for any and all claims, suits and actions of its employees. The Consultant hereby waives all claims and releases the Trust and any other Additional Insured Parties, from and against such claims, suits, and actions, and without limiting Article 13, shall hold harmless, and, at the Trust's option, defend the Trust and its affiliates (with counsel acceptable to the Trust) or any other Additional Insured Parties from and against such claims. The complete or partial failure of the Consultant's insurance carrier to fully protect and indemnify the Trust, its affiliates, and any other Additional Insured Parties, or the inadequacy of the insurance shall not in any way lessen or affect the obligations of the Consultant to the Trust its affiliates, or any other Additional Insured Parties. Notwithstanding any other provision of the Agreement, this Section shall survive termination or expiration of the Agreement.
- 17.3** In the event that the Trust shall, at its sole option, at any time elect to provide insurance ("OCIP" or otherwise) covering any part of Consultant's liability, Consultant shall itself and shall cause any relevant sub-consultants to do all things reasonably required to assist in obtaining and/or help qualify for and enrolling in such coverage. Any reduction in insurance premiums realized by Consultant or its Subcontractors as a result of its enrolment in an OCIP shall pass to the Trust.

## **ARTICLE 18 ASSIGNMENT AND SUBCONTRACTING**

- 18.1** The Agreement is binding upon the Parties and their heirs, executors, administrators, successors, and assigns.
- 18.2** The Consultant shall not subcontract any of the Work under the Agreement without the prior written consent of the Trust. If the Consultant proposes to subcontract any of the Work, it shall give written notice thereof to the Trust specifying the name, address, and contact person of the proposed Subcontractor, as well as a description of the Work to be performed and that person, and that Consultant has pre-qualified the proposed Subcontractor. Consultant shall also, upon request, furnish information with respect to past performances, safety documents, and financial status of the intended Subcontractors. Such financial information shall include, without limitation, financial statements, credit reports and other information requested by the Trust. The Trust shall have the right, from time to time, to conduct such credit investigations of all Subcontractors as the Trust shall deem necessary or appropriate. The Trust may reject any Subcontractor which it considers in its sole discretion unable to perform satisfactorily the portion of the Work involved. No approval or disapproval by the Trust of any Subcontractors shall relieve Consultant of its obligations under the

Contract Documents. The Trust's approval or disapproval of a Subcontractor does not create any responsibility or liability on the part of the Trust for the Subcontractor's performance. Any subcontracting of the Agreement without Trust approval shall be void at the option of the Trust.

- 18.3** All Work performed for the Consultant by a Subcontractor shall be pursuant to an agreement between the Consultant and Subcontractor which binds the Subcontractor to the applicable terms and conditions of the Agreement for the benefit of the Trust and its affiliates.
- 18.4** Consultant shall incorporate the following language set forth below, into the subcontract with each proposed Subcontractor:
- 18.4.1.** Subcontractor and its subcontractors of any tier shall be bound to Consultant by the terms of the Contract Documents between the Trust and Consultant, and shall assume toward Consultant all obligations and responsibilities which Consultant, by those documents, assumes toward the Trust, provided that where any provision of the Contract Documents between the Trust and Consultant is inconsistent with any provision of this Subcontract, the terms of the Contract Documents shall govern.
- 18.4.2.** The Trust may elect at any time or from time to time, including in connection with the termination of the Contract between the Trust and Consultant, to have this Subcontract assigned from the Consultant to the Trust or any entity designated by the Trust, and the Parties agree that such assignment shall be effective upon the delivery of a notice of such election by the Trust to the Subcontractor.
- 18.4.3.** The Trust is an intended third-party beneficiary to this subcontract. However, this provision shall not empower any Subcontractor with any contractual rights against the Trust.
- 18.5** If at any time during the performance of the Project, the Trust determines that any Subcontractor is not performing in accordance with the Agreement, the Trust may so notify the Consultant who shall take immediate steps to remedy the performance or to cancel the subcontract, whichever the Trust so requests.
- 18.6** As a condition of any subcontract, the Consultant shall require any Subcontractor to remove any claim it might have, in law or equity directly against the Trust or its affiliates. The Consultant shall be fully responsible to the Trust for the acts and/or omissions of any Subcontractor and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Consultant as if no Subcontractors were in place. Any obligation imposed by the Agreement upon the Consultant, where applicable, shall be equally binding upon and shall be construed as having application to any Subcontractor.
- 18.7** **Payments to Subcontractors.** Upon receipt of payment from or on behalf of the Trust, Consultant shall promptly pay to each Subcontractor the amount due to the Subcontractor (less retainage) for such Subcontractor's Work. Consultant must require each Subcontractor to make similar payments to its Subcontractors. Consultant shall certify to the Trust, upon submission of each invoice, the value of the Work performed by each Subcontractor (of any tier), the amount of Lien waivers provided to the Trust, and the reason for any discrepancies between the value of the Work performed and the Lien waiver amounts. The Trust shall have the right to withhold any payments to Consultant based upon its failure to timely pay any Subcontractor. Furthermore, the Trust shall have the ability to issue joint checks in the name of both Consultant and its Subcontractor (of any tier) to ensure timely payment. The Trust shall have no obligation to pay, or cause the payment of, any money to any Subcontractor or any other party acting through, under, or on behalf of Consultant except as may be otherwise required by Applicable Law, and then subject to Consultant's indemnity obligations under this Contract. Notwithstanding the above, Consultant shall be entitled to withhold payment(s) and/or offset amounts otherwise due any such Subcontractor based on its failure to

perform other obligations under the subcontract with Consultant. However, in the event such Subcontractor files a Lien or otherwise requests or demands payment from the Trust, Consultant must defend and indemnify the Trust against any losses related thereto.

- 18.8** The Consultant shall not assign the Agreement or any part thereof or any rights or any monies due or to become due under the Agreement without the prior written consent of the Trust. The Trust may assign the Agreement any rights or privileges contained therein or any part thereof to any affiliated company. Any assignment of the Agreement in violation of the foregoing shall be voidable at the option of the Trust.
- 18.9** The Trust may assign its rights, claims, interests, and obligations in the Contract Documents to a third party upon notice to Consultant without the consent of Consultant or any other limitation.
- 18.10** Notwithstanding any other provision of the Agreement, this Article shall survive the termination or expiration of the Agreement.

#### **ARTICLE 19 SUBCONTRACTOR'S INSURANCE AND INDEMNIFICATION**

- 19.1** Unless waived in writing by the Trust, prior to commencement of the Work, the Consultant shall require Subcontractors procure and maintain, insurance in form and amounts set forth in **Exhibit D**; with the exception of professional liability policies, which, unless otherwise required by the Trust, is not required of Subcontractors. Subcontractors shall submit certificates of insurance to the Consultant, for the period of their contract, evidencing that they have obtained such coverage. If requested by the Trust, such certificates shall be furnished immediately by Consultant to the Trust.
- 19.2** All Subcontractors' insurance policies maintained under this Article 19 and Exhibit D shall be written on an occurrence basis. Claims-made basis policies shall not be acceptable.
- 19.3** Consultant shall require that all Subcontractors it retains defend, indemnify, and hold harmless the Indemnified Parties to the same extent that Consultant is required to defend, indemnify and hold harmless the Indemnified Parties hereunder, including without limitation for investigating or defending any action or threatened actions arising to the same extent as Consultant is liable under its indemnification responsibilities.
- 19.4** Notwithstanding any other provision of the Agreement, this Article shall survive the termination or expiration of the Agreement.

#### **ARTICLE 20 QUALITY ASSURANCE AND CONTROL**

- 20.1** Any condition threatening to adversely affect quality assurance and control of Consultant's performance under the Agreement shall be immediately brought to the attention of the Trust. Consultant shall be responsible for adopting, maintaining, and complying with an adequate quality assurance and control plan for conduct of its operations, a conformed copy of the current version of which has been furnished to the Trust. Consultant shall furnish the Trust conformed copies of such plan, as it may be updated or revised from time to time, during the Term. Nothing contained in this Section shall be deemed to relieve Consultant of its responsibilities under the Agreement, at law, or in equity, or to imply any approval by the Trust of Consultant's quality assurance and control plan contents or documents, or to make the Trust responsible for any act or omission of Consultant with respect to compliance or noncompliance with said plan.
- 20.2** All Work will be subject to the Project Administrator's inspection, direction, and approval. The Consultant agrees to furnish all the information pertaining to the Work as the Project Administrator may require.

- 20.3** In the event that the Trust discovers any errors, variations from the requirements of the Agreement, or defects in the Work, the Trust shall advise the Consultant of its discovery; however, it is expressly agreed that any omission on the Trust's part to advise the Consultant of any such errors, variations, or defects or to provide any instructions or explanations shall not give the Consultant any right or claim against the Trust, and shall not in any way relieve the Consultant from its obligation to provide the Work in accordance with the Agreement.
- 20.4** At any time during the term of the Agreement, the Trust or its designated representative shall be entitled to: (1) conduct and/or witness any test required by the Agreement; (2) otherwise inspect, witness and/or test the Work; (3) review the Consultant's and Subcontractor's procedures and documents pertaining to inspection, testing or witnessing of tests; and (4) review the Consultant's and Subcontractor's documents pertaining to the Work. For such purposes the Trust and its representatives shall be provided access to the Consultant's or Subcontractors' Work, when and in such manner as the Trust may require. In the event the Consultant employs Subcontractors for any part of the Work, the Consultant shall require Subcontractors to comply with all applicable provisions of this Agreement.
- 20.5** The Consultant shall provide and maintain an examination, inspection and testing system acceptable to the Trust as required by the Agreement. The Consultant shall submit to the Trust the results of all such examinations, tests and inspections and shall maintain records of the same and make them available to the Trust.
- 20.6** In addition to any notice requirements otherwise set forth in the Agreement, the Consultant shall give the Trust (a) five (5) Days prior written notice of any tests and inspections required by any WA for the Trust or its representatives' instructions, laws, regulations or ordinances to be witnessed or approved by the Trust, (b) timely notice of all other tests and inspections, and (c) 48 hours additional notice prior to actual performance of any test or inspection.
- 20.7** Neither the Trust's nor its representative's inspection or testing, or witnessing of tests or inspections of the Work nor its failure to perform, require or approve tests or inspections shall (1) affect the warranties and guarantees of the Consultant, (2) relieve the Consultant from any responsibility or liability with respect to workmanship, materials or equipment, (3) constitute an acceptance of the Work by the Trust or an agreement by the Trust that the Work meets specified requirements, (4) impair the Trust's right to reject nonconforming or defective Work, (5) constitute a waiver by the Trust of any rights under the Agreement, or (6) relieve the Consultant of any of its obligations under the Agreement, notwithstanding the Trust's opportunity to inspect the Work, the Trust's knowledge of the nonconformance or defect, or the Trust's failure to earlier reject the Work.
- 20.8** If the Trust determines that any Work has not satisfactorily passed any test or inspection or does not meet the requirements of the Agreement or that the Consultant has not conducted or has improperly conducted any required test or inspection, the Trust shall have the right, in addition to any other rights set forth in the Agreement, to (1) reject and stop the Work and (2) request repair of the deficiency in accordance with Article 7.
- 20.9** The Consultant shall maintain a formal quality assurance program throughout the duration of the Work. The quality assurance program shall provide continual inspection of construction operations and shall include coordination of the various trades involved in the Work. The Trust shall have the right at any time during the term of the Agreement to review the Consultant's quality assurance program and to have the Consultant's Work tested and inspected by a third party. If such Work is not in accordance with the Agreement, the Consultant shall pay such cost.
- 20.10** The Consultant shall retain all quality assurance documents, including but not limited to nondestructive examination records and testing records for the term of the Agreement. Upon final acceptance, termination, cancellation, expiration or as may be otherwise required by the Agreement,



or sooner if requested by the Trust, the Consultant shall submit copies of all such documents to the Trust.

- 20.11** The Consultant shall designate a quality control representative who shall be responsible for the administration and performance of the quality assurance program. This person shall be authorized to stop the Work or any portion thereof without fear of retribution.

## **ARTICLE 21 SAFETY**

- 21.1** The Consultant shall be solely responsible and assume all liability for the safety and supervision of its employees, Subcontractors other persons under Consultant's or its Subcontractor's control engaged in the Work on the Site. The Consultant shall establish and effectively and continuously implement a safety program that includes both occupational and process safety as applicable.
- 21.2** The Consultant shall, and shall require its Subcontractors and their employees, agents, and representatives to at all times comply with all Applicable Safety Standards and to take all necessary safety and other precautions to protect property and persons from damage or injury arising out of performance on the Project, whether the same are in force at the execution of this Agreement or may in the future be passed, enacted or directed. In cases where one or more conflicting standards may be applicable, the Consultant shall comply with the most stringent applicable safety standard. The Consultant shall continually inspect the Work and supervise its personnel to determine and enforce compliance with the above provisions. The Consultant shall conduct all operations in a manner to ensure the safety of all personnel, the general public, and the protection of the environment and so as to avoid the risk of injury, death, loss, theft, or damage by accident, vandalism, sabotage, or any other means.
- 21.3** The Consultant is responsible for adopting, maintaining, and complying with an adequate health and safety plan for each WA, which must be in accordance with the Applicable Safety Standards and supporting employee information and other records for conduct of its operations. The Consultant shall furnish the Trust copies of such plan, as it may be updated or revised from time to time, during the Term. Nothing contained in this Section shall be deemed to relieve Consultant of its responsibilities under the Agreement, at law, or in equity, or to imply any approval by the Trust of Consultant's health and safety plan contents or documents, or to make the Trust responsible for any act or omission of Consultant with respect to compliance or noncompliance with said plan.
- 21.4** The Consultant shall at its sole expense provide adequate safeguards, safety devices and protective equipment and enforce their use and take any other needed actions to protect the life, health and safety of the public and to protect property and the environment in connection with its performance on the Project. The Consultant shall at its sole expense provide adequate first aid facilities and shall make those facilities available for the treatment of persons who may have minor injuries or become ill at the Site or while engaged in the performance of Work.
- 21.5** The Consultant shall at all times keep its work areas in a neat, clean, and safe condition in accordance with the Agreement. The Consultant shall, on a daily basis, clean up and remove from the Site and adjoining property and rights-of-way all waste materials and rubbish associated with its Work and appropriately manage recyclables as directed by Trust. Work shall be performed in a manner which minimizes to the greatest extent possible any disruption to the surrounding landscape, waterways, communities and the general public.
- 21.6** In the event that the Consultant materially breaches or violates any Applicable Safety Standard including the terms of this Article, the Trust may, in its reasonable discretion: (i) interrupt, suspend or delay the Work; (ii) require the Consultant to implement a corrective action plan; and/or (iii) terminate the Agreement for cause.

## **ARTICLE 22 PERMITS AND LICENSES**

- 22.1** Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Consultant, unless otherwise expressly set forth herein as being the responsibility of the Trust. In either case the Consultant shall be responsible for prosecuting the Work in accordance with the provisions of all applicable permits and licenses.
- 22.2** The Consultant shall not enter into negotiations with any Governmental Authority for acceptance of variations from or revisions to safety or health, or air, water or noise pollution laws or regulations relating to the Agreement or to the performance thereof, without the Trust's prior written consent and participation.

## **ARTICLE 23 ENVIRONMENTAL PROTECTION**

- 23.1** The Consultant shall comply with all permit conditions, the Trust's policies set forth in the Agreement, and all applicable federal, state and local environmental laws, requirements, orders, directives, rules, regulations, ordinances, and codes whether the same are in force at the execution of the Agreement or may in the future be passed, enacted or directed while Work is being performed under a WA.
- 23.2** Without limiting the foregoing, the Consultant shall conduct all operations in such a manner to minimize the impact upon the natural environment and shall comply with all solid waste, hazardous waste, health and safety, notice, training, and environmental protection laws, requirements, orders, directives, rules, regulations, ordinances, and codes whether the same are in force at the execution of the Agreement or may in the future be passed, enacted or directed ("hazardous waste" includes all substances which are or may be identified as such in 40 C.F.R. Part 261 and applicable state hazardous waste regulations). The Consultant shall supervise its personnel and Subcontractors to determine and enforce compliance with the above provisions.
- 23.3** The Consultant shall provide the Trust with Material Safety Data Sheets covering all materials furnished under or otherwise associated with the Work under the Agreement, or provide the Trust with a document certifying that the Material Safety Data Sheets are not required for each such material. The Consultant shall submit a list to the Trust of all chemicals and other materials or products designated as hazardous in accordance with the OSHA Hazardous Communication Standard and the EPA Superfund Amendments and Reauthorization Act, Title III that it brings on to the Site or any other property of the Trust, and the associated quantities. The Consultant shall handle, store, use and dispose of chemicals and hazardous products in accordance with the Agreement.
- 23.4** If any violation of environmental permits, licenses, and other environmental regulations or statutes occurs, the Consultant shall take immediate action to mitigate any further violation. The Consultant shall immediately notify the Trust of the violation and to the extent consistent with applicable law wait for further instructions from the Trust. If the Trust instructs the Consultant to remedy the violation, the Consultant shall contact the appropriate government agencies as required by law and report to the Trust, in writing, what actions it has performed and intends to take to remedy the violation. The Consultant shall also report to the Trust its intended procedures for preventing recurrence of such violations.
- 23.5** The Consultant shall, at its expense, take all actions necessary to protect the Trust, including without limitation employees and representatives of the Trust, from any exposure to, or hazards of, hazardous and/or toxic wastes or substances brought to the site by Consultant or anyone under their control, and, without limiting Article 13, the Consultant shall defend, indemnify, and hold harmless the Trust and its affiliates from any acts, claims, or damages claimed by the Consultant's employees, Subcontractors, and Subcontractors' employees, or any other liability incurred by the Trust arising from a discharge of, exposure to, handling, disposition or transportation of such hazardous or toxic



materials or waste that results in whole or in part from Consultant's or Subcontractor's acts or omissions to act.

- 23.6** The presence of contamination (pre-existing) as of the date of commencement of Consultant's performance shall not in and of itself give rise to any duty on the part of Consultant to indemnify the Trust hereunder. Notwithstanding the foregoing sentence, and without limiting Article 13, Consultant's financial, legal, and indemnity obligations shall apply to the extent of the exacerbation of Site contamination or the release of any hazardous wastes, substances, and materials (as defined by state and federal regulations) to the extent caused by or contributed to by the negligence of Consultant or any person or firm engaged by or through Consultant.
- 23.7** Consultant agrees that it shall inform its officers; directors; employees; agents; vendors; contractors; and subcontractors of any tier; and any other party which may come into contact with hazardous or toxic material(s) as a result of Consultant's performance or failure to perform hereunder of the nature of such material(s) and any health or environmental risk(s) associated herewith. In this regard, Consultant will exercise its independent judgment as to whether it should consult with a more knowledgeable party to determine the nature and extent of any such risk(s).
- 23.8** In the event of a release or discovery of pre-existing hazardous waste or substance, the Consultant shall immediately notify the Trust. The Consultant shall take actions to contain a release when possible to do so in a safe manner and prevent the material from discharging into drains, waterways or onto exposed soil.
- 23.9** If the Consultant fails to correct an environmental violation caused by or arising from an act or omission of Consultant or Subcontractor when directed by the Trust to do so, the Trust may direct a third party to do so at the Consultant's expense.
- 23.10** The Trust will notify the Consultant of any observed non-compliance; however, failure of the Trust to recognize or notify the Consultant of any non-compliance shall not relieve the Consultant of its contractual and legal responsibility for such non-compliance and to protect the environment.
- 23.11** Without limiting Article 13, the Consultant shall, at its sole expense, defend, indemnify and hold harmless the Trust and their officers, directors, employees, agents, servants and assigns from and against all liabilities to third parties (including governmental entities) and all costs and expenses incurred by the Trust or its affiliates to the extent directly caused by the Consultant's noncompliance with this Article.
- 23.12** It is understood and agreed that Consultant shall not (solely by virtue of entering into the Agreement) be deemed to be, and is not responsible as an owner, generator, operator, transporter, treater, arranger or other "person" as described in CERCLA, as amended, or RCRA, or applicable state or local laws. Rather, Consultant acts at the direction of the Trust in arranging for the transportation, storage, treatment, or disposal of the contaminated materials generated from the Trust's site(s). the Trust agrees to indemnify and hold harmless Consultant from any and all claims by third parties that allege Consultant to be the owner, generator, operator, transporter, treater, arranger or other "person" as described in CERCLA or RCRA for pre-existing conditions if, under the terms of a particular WA, Consultant is responsible for transportation, storage, treatment, or disposal nothing in this Section shall relieve Consultant of its indemnification requirements under the Agreement, with regard to such activities.
- 23.13** Notwithstanding any other provision of the Agreement, this Article shall survive termination or expiration of the Agreement.

## ARTICLE 24 THE TRUST'S RIGHT TO SUSPEND WORK

- 24.1** The Trust may at its sole discretion interrupt, suspend or delay execution of all or any part of the Work for any reason whatsoever upon written notice to the Consultant specifying the nature and expected duration of the interruption, suspension or delay (“**Suspension Notice**”). The Trust’s Suspension Notice shall designate the amount and type of labor and equipment to be committed to the Work, if any, during the period of suspension. The Consultant shall utilize its labor, equipment and any other resources so that costs are minimized during the suspension. The provisions of this Article shall apply to any suspension by act of a Governmental Authority, provided such suspension is not due in whole or in part to any improper act of Consultant.
- 24.1.1.** Upon receipt of such Suspension Notice, Contactor shall promptly notify the Trust of all costs associated with the suspension, delay, or interruption, and agrees not to incur avoidable costs without the Trust’s prior written consent. Any costs or delays not provided by Consultant to the Trust within thirty (30) Days of Consultant’s knowledge of such costs or delays shall be waived by Consultant. Despite the suspension, delay, or interruption of a portion of the Work, Consultant shall continue to perform the remaining Work.
- 24.1.2.** Notwithstanding the foregoing, the Trust may immediately suspend Work in order to prevent, in the Trust’s opinion, injury, loss or damage to persons or property. Work shall not thereafter proceed until Consultant agrees to conduct the Work in a manner satisfactory to the Trust and in compliance with the Contract Documents. Consultant shall not be entitled reimbursement for costs incurred due to such suspension or extension of time for performance of the Contract in the event the Trust suspends Consultant’s Work pursuant to this Section. Failure of the Trust to inspect, observe or detect a hazardous, dangerous, or other Work condition or procedure pertaining to Consultant’s Work shall not be construed as an act of omission or negligence by the Trust.
- 24.2** In its Suspension Notice, the Trust will designate what Work, if any, is to be continued. Upon receipt of such notice, the Consultant shall, unless otherwise directed by the Trust:
- 24.2.1.** Immediately discontinue the Work on the date and to the extent specified in the notice;
- 24.2.2.** Place no further orders or subcontracts for or in connection with the Project other than to the extent required in the Suspension Notice;
- 24.2.3.** Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the Trust of all orders and subcontracts to the extent required by the suspension; and
- 24.2.4.** Continue to protect and preserve the Work.
- 24.3** The Consultant shall immediately resume any of the Work so interrupted, suspended or delayed when directed to do so by the Trust. A suspension of the Work pursuant to this Article not the fault of Consultant shall be deemed a Contemplated Delay and additional time or compensation, if any shall be addressed in accordance with Article 28.
- 24.4** Notwithstanding any other provision of the Agreement, no compensation or extension of time will be granted to the Consultant for any suspension to the extent that the suspension is caused by the Consultant’s fault, including, but not limited to, the Consultant’s failure to comply with the safety and environmental protection provisions of the Agreement or to the extent that an equitable adjustment is provided for or excluded under any other provision of the Agreement.

## **ARTICLE 25 THE TRUST'S RIGHT TO TERMINATE AGREEMENT FOR CAUSE**

- 25.1** Notwithstanding any other provision of the Agreement, if the Consultant performs any of the following acts or omissions, then the Trust may issue a notice of default to the Consultant identifying the default:
- 25.1.1.** fails to prosecute the Work with diligence or has fallen behind the Schedule plus authorized time extensions and if in the reasonable opinion of the Trust, fails to take all necessary steps to remedy the Consultant's failure to comply with the terms of the Schedule;
  - 25.1.2.** fails to make prompt payment when due to Subcontractors after Consultant has been paid in accordance with the requirements of this Agreement for Subcontractor's services by the Trust;
  - 25.1.3.** fails to comply with any of the material terms or conditions of the Agreement;
  - 25.1.4.** sells or transfers all or substantially all of its assets without the Trust's prior written consent;
  - 25.1.5.** enters into any voluntary or involuntary bankruptcy proceeding or receivership;
  - 25.1.6.** makes a general assignment for the benefit of its creditors;
  - 25.1.7.** experiences a labor dispute which threatens adversely to affect the progress or cost of the Project hereunder;
  - 25.1.8.** abandons the Work;
  - 25.1.9.** refuses or neglects to provide sufficient and properly skilled or other labor or sufficient materials of proper quality;
  - 25.1.10.** fails to comply with the Applicable Safety Standard including the terms of Article 21;
  - 25.1.11.** terminates its existence as a corporate entity, is part of a merger, acquisition, sale, consolidation or take-over, or if all or substantially all of the Consultant's assets are transferred to another person, or business entity; or
  - 25.1.12.** fails to take appropriate action as set forth in Article 37 upon Consultant's discovery of a Prohibited Act.
- 25.2** If the Consultant does not correct (or if cannot be corrected within ten (10) Days, Consultant has in good faith commenced to correct) the default within ten (10) Days of notice, then the Trust shall have the right, without prejudice to any other right or remedy, to terminate the Agreement, in whole or part. Such termination shall be effective upon written notice to the Consultant setting forth (a) the date of the termination and (b) that the Consultant shall immediately discontinue the Work to the extent specified in such notice. The Trust may exercise its right of partial termination under the Agreement any number of times.
- 25.3** In the event the Trust terminates all or any part of the Agreement for cause, the Trust may finish the Work specified on any or all then-currently-active WAs or have the Work finished by a third party by whatever method it may deem expedient. In such case, the Trust shall not be required to obtain the lowest price for completion of the Work thereunder but may make such reasonable expenditures as shall best accomplish said completion; and the Consultant shall not be entitled to receive any further payment until the applicable Work has been finished. If such expenses exceed the unpaid

balance, the Consultant shall pay the difference to the Trust within thirty (30) Days of the Trust's notice thereof to the Consultant.

- 25.4** If all or any part of the Agreement is terminated for cause, the Trust shall be entitled, at its option, to: (a) retain any Work previously delivered to the Trust or paid for by the Trust, (b) require delivery of any Work and/or documents, regardless of their stage of completion which are in the Consultant's possession or control, (c) require the Consultant to assign to the Trust all or any of the Consultant's rights with respect to orders or subcontracts which relate to the Project, (d) reject all or any of the Work, regardless of whether it has been delivered to the Trust, (e) require the Consultant to cooperate with a new consultant for the period of time necessary to familiarize the new consultant with the Project, (f) have another consultant complete the Work at Consultant's expense, and (g) require completion according to the terms of the Agreement of any Work which has not been terminated. The Consultant shall be required to refund to the Trust any payments theretofore made for rejected Work. The Trust shall be entitled to withhold from any payment otherwise due to the Consultant under this Article an amount sufficient to protect the Trust from any outstanding or anticipated liens or claims in connection with Work which has not been rejected or anticipated costs to complete the Work in excess of the remaining Contract Price. The Trust shall not be liable for any loss or damage (including, but not limited to, special, indirect, incidental, or consequential damages or anticipated profits) incurred by reason of termination for cause of the Agreement.
- 25.5** No amount shall be paid or payable by the Trust for the Consultant's termination costs pursuant to this Section, including, but not limited to, demobilization costs, costs associated with the transfer or termination of personnel, or loss of anticipated profit.
- 25.6** All representations and warranties of Consultant set forth in the Agreement shall survive expiration or termination of the Agreement, and any other provisions of the Agreement which survive the date of termination shall continue to be binding upon the Consultant.
- 25.7** In the event that a termination by the Trust of all or part of the Agreement under this Article is determined to have been made without cause, such termination shall thereafter be treated as termination for convenience under Article.

## **ARTICLE 26 TERMINATION FOR CONVENIENCE**

- 26.1** Notwithstanding any other provision of the Agreement, the Trust may, at its sole discretion, at any time, for any reason, by notice to the Consultant, terminate the Agreement and/or any WA, in whole or in part without cause, and such termination shall not constitute a breach of contract. Such termination shall be effective upon the date set forth in the written notice to Consultant. In such case, the Consultant, unless otherwise directed by the Trust, shall immediately:
- 26.1.1.** Stop its Work hereunder on the date and to the extent specified in said notice;
- 26.1.2.** Place no further orders or subcontracts for any part of the Project other than for Work which has not been terminated;
- 26.1.3.** Terminate, as directed by the Trust, all orders and subcontracts to the extent that they relate to Work which has been terminated, and settle, with the approval or ratification of the Trust, to the extent the Trust may require, all outstanding liabilities and claims arising out of such termination of orders and subcontracts;
- 26.1.4.** Assign to the Trust, as required by the Trust, any and all of the Consultant's rights with respect to orders or subcontracts which relate to terminated Work;

- 26.1.5. Deliver to the Trust, as required by the Trust, any or all Work, drawings, technical data or other information, materials or documents regardless of their stage of completion, which are in the Consultant's possession or control;
- 26.1.6. Document Work completed or in progress and provide any termination reports;
- 26.1.7. Work with a new consultant for the period of time necessary to familiarize the new consultant with the Work and the Project;
- 26.1.8. Complete any Work which has not been terminated pursuant to said notice; and
- 26.1.9. Take whatever action may be necessary to preserve and protect the Work and to mitigate the Consultant's damages in connection with the partial or complete termination of the Agreement.
- 26.2. If a WA has been issued, the Consultant shall be entitled to payment Partial Performance Payment for any Work actually performed prior to termination under this Article. In no event shall the total of the Partial Performance Payment and/or Termination Costs exceed the price as determined under the relevant WA.
- 26.3. In no case shall the Consultant be entitled to recover lost profits. In no case shall the Consultant be entitled to recover any costs and expenses associated with the inability of the Consultant to find work for idle employees and equipment that have been rendered idle as a result of termination of the Agreement.
- 26.4. The Consultant's claim for Partial Performance Payment and/or Termination Costs shall be contingent upon the Consultant's good faith diligent compliance with the provisions of this Article to the Trust's satisfaction which will not be unreasonably withheld, and shall be submitted to the Trust within three (3) months of the effective date of termination under this Article. If said claim is not submitted within three (3) months, the Consultant waives any right to the claim for Partial Performance Payment and/or Termination Costs.
- 26.5. In the event of a termination of this Agreement pursuant to this Article, Consultant shall remain responsible for all of its obligations and all Work performed prior to the date of such termination. Additionally, all warranties and guarantees of Consultant pursuant to this Agreement shall survive termination of the Agreement to the extent that they relate to Work which has not been rejected or terminated, and any other provisions of the Agreement which survive the date of termination shall continue to be binding upon the Consultant.
- 26.6. All representations and warranties of Consultant set forth in the Agreement shall survive expiration or termination of the Agreement, and any other provisions of the Agreement which survive the date of termination shall continue to be binding upon the Consultant.
- 26.7. A termination for convenience shall not entitle the Consultant to damage remedies that would normally arise as a result of breach of contract, whether such damage remedies are categorized in contract, tort, or otherwise, as direct, special, indirect, incidental or consequential damages. Rather, the Consultant's rights and remedies are exclusively limited to Partial Performance Payment and/or Termination Costs. Consultant waives any other remedies, rights, and claims.
- 26.8. **Termination by the Consultant.** If, without good cause, the Trust shall fail to make timely payment in accordance with Section 9.4 on any approved invoice, then Consultant shall serve the Trust with notice thereof, and, if the Trust shall fail to make such payment, then this Agreement may be terminated by Consultant by written notice to the Trust setting forth the date of termination, which date shall not be sooner than ten (10) Days after the date of the notice. If, within said ten (10) Day period, the matter giving rise to Consultant's right to terminate this Agreement shall not have been

cured, this Agreement shall be deemed terminated for convenience and the Consultant shall be compensated in the manner and to the extent set forth in Section 26.2 hereof.

- 26.9** In the case of termination of the Agreement, the Consultant, if notified to do so by the Trust, shall promptly remove any part or all of its equipment, material, and supplies from the Site, failing which the Trust shall have the right to remove such equipment and supplies at the expense of the Consultant.

## **ARTICLE 27 FORCE MAJEURE**

- 27.1** As used in this Contract, the term “**Force Majeure**” shall mean any extraordinary acts, events, or occurrences that delay the critical path of the Project that are caused by climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides or other catastrophes or acts of God, quarantine, blockade, governmental acts, war (declared or not), rebellion, terrorism (foreign and domestic), or national or regional industry-wide labor disputes (including walk-outs, work stoppages or strikes).
- 27.2** A Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, except the obligation to make payments previously due in a timely manner for liabilities actually incurred, if and to the extent that its failure of, or delay in, performance is due to a Force Majeure; provided the Party claiming excuse by reason of such Force Majeure: (a) gives the other Party written notice describing the particulars of the Force Majeure event as soon as reasonably practicable, but in no event later than seven (7) Days after the occurrence of such event; (b) suspends performance only to the extent and for the duration that is reasonably required by the Force Majeure event; (c) is not excused as a result of such occurrence from any obligations of such Party which arose before the occurrence causing the suspension of performance; (d) uses commercially reasonable efforts to overcome or mitigate the effects of such occurrence; and (e) promptly resumes performance hereunder when such Party is able to resume performance of its obligations under this Contract, and shall give the other Party written notice to that effect. Upon receipt of such notice, if necessary, the time for performing the affected activities shall be extended for a period of time reasonably necessary to overcome the effect of such delays. Such extension shall be the sole remedy and compensation for each *force majeure* event. Notwithstanding the foregoing, the Trust shall have the right to terminate the Agreement under Article 26.
- 27.3** Events Not Constituting Force Majeure. The term “Force Majeure” shall not include any of the following (including, but not limited to): labor disputes (including walk-outs, work stoppages or strikes) caused by: breaches of any applicable labor or collective bargaining agreement by the Consultant or any of its Subcontractors; actions of Consultant toward the Trust’s personnel, or personnel of the Trust’s Engineer; or unfair labor practices of Consultant; Consultant’s inability to pay monies due and owing to any third party or Subcontractor, actions, inactions or non-performance on the part Consultants Subcontractors, the inability of Consultant to secure labor to perform the Work, or weather conditions other than those specifically listed herein; any event the impact of which Consultant claims is less than two (2) Days and the impact does not affect activities on the critical path.
- 27.4** The written notice required under Section 27.1 shall specify the nature, cause, date of commencement and anticipated extent of such delay or nonperformance and whether it anticipates that any delays in scheduled delivery or performance will result. Such notice shall be submitted in ample time to permit full investigation and evaluation of any claimed delay or nonperformance. Failure to provide such notice shall constitute a waiver of any claim.
- 27.5** Consultant shall be obligated to exhaust all reasonable efforts and means in the event of any labor unrest, dispute, or strike to avert or avoid delay or stoppage of Work. The Trust may direct Consultant, to take reasonable steps to resolve any strike, walkout, lockout or other labor dispute, or procure materials or labor from other sources so as to minimize adverse impact on the Project..



## ARTICLE 28 EXTENSIONS OF TIME

- 28.1** Contemplated Delays. If the Consultant is delayed by: (i) any act or omission by the Trust, or (ii) non-Force Majeure events impacting the Work beyond the Consultant's control, none of which are caused, instituted, or provoked by the Consultant or by any Subcontractor, agent or representative of the Consultant, and if the Consultant cannot with best efforts, due to such act or omission, to minimize or make up for such delay or delays and the Consultant demonstrates that the Work is actually hindered or delayed thereby, then such delay shall be deemed a "**Contemplated Delays**", and the specified date or dates for completion of the Work or the portion or portions thereof so delayed will be extended by the Trust by the actual number of days attributable to each such demonstrated cause as determined by the Project Administrator.
- 28.2** Delay Caused by Force Majeure. To the extent the delay or suspension on critical path activities is caused by Force Majeure, Consultant shall give the Trust written notice specifying the date of commencement of such delay or suspension within five (5) Days after the date on which Consultant first becomes aware of the event or act constituting the Force Majeure. The Schedule shall be extended from the Force Majeure Delay Date only to the extent that the Force Majeure impacts the Project's critical path. No Force Majeure event shall give rise to a change in the Contract Price, and Consultant agrees to make no claims for additional compensation or damages for delay of any kind related to a Force Majeure Delay, regardless of cause.
- 28.3** Concurrent Delays. If the Consultant's Work has been delayed pursuant to a Contemplated Delay and a separate delay also arises for all or a portion of the same period of time for which Consultant is not entitled to additional time (the "**Concurrent Delay**"), then the extension of time that Consultant would otherwise be entitled to as a result of the Contemplated Delay shall be reduced by the number of days that the Concurrent Delay exists during such Contemplated Delay. Consultant shall not be entitled to any increase in the Contract Price for the period of time of the Concurrent Delay, and Consultant agrees to make no claims for additional compensation or damages for delay of any kind related to a Concurrent Delay, regardless of cause.
- 28.4** Consultant shall use its best efforts to re-sequence the Work and/or mitigate, to the greatest extent practicable, the effect of any delay to the Schedule.
- 28.5** The Consultant shall give the Trust prompt written notice of any occurrence or conditions which in the Consultant's opinion entitle it to an extension of time. Such notice shall be submitted in ample time to permit full investigation and evaluation of the Consultant's claim. Failure to provide such notice shall constitute a waiver by the Consultant of any claim. The Trust shall acknowledge receipt of the Consultant's notice within ten (10) Days of its receipt.
- 28.6** Notwithstanding the foregoing, no periods of such delay will be deemed to begin until timely written notice thereof has been given by the Consultant to the Trust. The Project Administrator shall determine the time period covered by the delay.
- 28.7** The Consultant shall include in all Subcontracts, whether for services, labor or materials, a provision entitling the Consultant to terminate or cancel such Subcontract in the event of a breach thereby by the Subcontractor or any other occurrence or omission thereunder which would result in a delay in, or hindrance to, the timely progress of the Work.
- 28.8** If a delay or suspension of Work or activities identified in the Schedule occurs and affects the performance of Consultant's Work on the critical path and Consultant has prepared an appropriate analysis identifying the extent of the delay to the critical path, an appropriate Change Order will be issued pursuant to this Agreement to adjust the Schedule.
- 28.9** Provided the Consultant has complied with all notice requirements of this Agreement, the Consultant shall be entitled to recover its actual, provable, increased field-work costs (without

markup) that is attributable to such Contemplated Delay. Such costs shall include affected Subcontractor costs, but only to the extent the Consultant is legally obligated to pay such costs to the affected Subcontractors.

- 28.10** Any adjustment in the Contract Price or Schedule due to a Contemplated Delay shall be deemed accepted by the Trust only if reflected in a validly issued Change Order, which the Trust shall not unreasonably withhold or delay. Such adjustment to the Contract Price and Schedule shall constitute full settlement to the Consultant for the applicable Contemplated Delay. In no event shall the total paid to the Consultant exceed the Contract Price as adjusted pursuant to the measurement and payment terms of the Agreement. In no event shall the Consultant be entitled to any damages, including loss of anticipated profits due to a Contemplated Delay.

## **ARTICLE 29 PUBLICITY**

- 29.1** Notwithstanding any other provision of the Agreement, the Consultant shall not, without the Trust's prior written consent, publish any information pertaining to the Agreement, whether during the Term of the Agreement or thereafter.
- 29.2** The Consultant shall not display any signs, posters or other advertising matter in or around the Site without prior written approval of the Trust.

## **ARTICLE 30 PROPRIETARY AND CONFIDENTIAL INFORMATION**

- 30.1** The Consultant hereby acknowledges that during the course of the Consultant's participation in a bid and/or selection process and in the performance of the requirements of the Agreement, the Consultant may be furnished with or exposed to information that is proprietary and confidential to the Trust and/or grantors to the Trust, ("**Confidential Information**"). Confidential Information shall include but shall not be limited to information concerning pricing, terms and conditions, customers, employees, facility locations, techniques, methods, computer programs, software, drawings, maps, plans, and data relating to the Trust and/or its affiliates. The Trust shall designate in writing information it deems to be Confidential Information.
- 30.2** The Consultant agrees that: (a) the Consultant shall use such Confidential Information only in connection with its participation in a bid and/or selection process or the requirements performed under the Agreement and (b) shall not disclose such Confidential Information to third parties or use such Confidential Information for any other purpose without the prior written consent of an authorized representative of the Trust.
- 30.3** The Consultant may disclose Confidential Information to its partner(s), employee(s), agent(s), vendor(s), contractor(s), Subcontractor(s), or any other party employed by the Consultant if and only if (a) such disclosure is necessary in order to perform the Work and/or Service under the Agreement; and (b) the party to whom the Confidential Information will be disclosed has executed and delivered to the Trust a Nondisclosure Agreement. If the Consultant has any question about whether information is Confidential Information, it shall contact the Trust prior to disclosing such information for a determination as to its proprietary status.
- 30.4** Upon termination of the Agreement, the Consultant shall immediately return such Confidential Information, including without limitation any drawings, maps, or electronic data or copies thereof, to the Trust.
- 30.5** Both Parties acknowledge that the breach of the Consultant's obligations under this provision will result in irreparable harm to the Trust and/or grantors to the Trust. Any breach of these provisions by the Consultant shall entitle the Trust to make use of any and all available remedies, at law and in equity including, but not limited to, injunctive relief.



- 30.6** If either Consultant is required by law to disclose Confidential Information (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demands, regulation, statute or otherwise), the Consultant shall, when permitted by law, (i) notify the Trust and provide the Trust the opportunity to review the Confidential Information, and (ii) provide the Trust the opportunity to seek a protective order or other appropriate remedy. In the event that a protective order or other remedy is not obtained or is not pursued within a reasonable period of time, the Consultant shall furnish only that portion of the Confidential Information that it is legally required to disclose and shall request that confidential treatment be accorded to the Confidential Information by relevant third parties.
- 30.7** Notwithstanding anything to the contrary in this Article, Consultant shall not be required to hold confidential any information that (i) becomes publicly available other than through disclosure by the Consultant; (ii) is independently developed by Consultant; or (iii) becomes available to the Consultant without restriction from a third party, provided that such third party is not bound by a confidentiality agreement with the Trust or its representatives.
- 30.8** The obligations set forth in this Article shall survive expiration or termination of this Agreement for a period of five years.

#### **ARTICLE 31 COMMUNICATIONS WITH REGULATORS, MEDIA, OR PUBLIC**

- 31.1** The Consultant shall immediately notify the Trust of all communications from regulatory agencies including, but not limited to, notices, postings, letters, telephone calls or visits. If a notice of noncompliance or any other official correspondence is received by the Consultant from a Governmental Authority a copy of the notice or correspondence shall be provided to the Trust within 24 hours of its receipt.
- 31.2** The Consultant shall immediately notify the Trust of any inquiries from the media. Requests for information from the media shall be reviewed, approved and distributed by the Trust
- 31.3** The Consultant shall immediately notify the Trust of any calls or other communications from the public. Requests for information from the public shall be reviewed, approved and distributed by the Trust.
- 31.4** The Consultant shall notify the Trust as soon as the Consultant becomes aware of a current or scheduled regulatory inspection. The Trust will arrange a time for the inspection and the Project Administrator or other designated Trust representative will accompany the regulatory inspectors. The Consultant shall also designate a representative who will accompany the regulatory inspectors. The Consultant shall fully cooperate with the federal, state, and local regulatory agencies during inspections or other official functions. If an inspector from a federal, state or local regulatory agency arrives at a location unannounced and wishes to conduct an inspection, the Consultant shall notify the Project Administrator and obtain and subsequently submit to the Trust the inspector's name, agency and telephone number and shall accommodate the inspector. If the conduct of an inspection will, for reasons such as safety considerations, put the inspector or the Consultant's representative at risk of injury, the Consultant shall attempt to reschedule the inspection at a date and time acceptable to all parties.

#### **ARTICLE 32 RIGHTS OF VARIOUS INTERESTS**

- 32.1** Whenever work being done by the Trust's or by other contractors' forces is contiguous to Work covered by the Agreement, the respective rights of the various interests involved shall be established by the Trust to secure the completion of the various portions of the Project in an orderly and timely manner. At no time shall the Consultant restrict the movement of other personnel and/or equipment in the performance of their work.

- 32.2 The Consultant shall be responsible for promptly notifying the Trust in the event that it shall be necessary to coordinate work between the Consultant and others.

### **ARTICLE 33 ADDITIONAL CONTRACTS**

- 33.1 The Trust reserves the right to enter into other contracts related to the Agreement or the Project and may require any other contractor, including the Trust or its affiliates, to provide labor or materials to the Project, and such other contracts shall not be cause for the Consultant to claim a change in the Project; provided, however, other such contracts do not materially interfere with, delay, or change the Work. The Consultant shall afford other contractors, the Trust or its affiliates reasonable opportunity for the introduction and storage of their materials and the execution of their work, and the Consultant shall cooperate with the Trust, its affiliates and any other contractors in coordinating their activities.
- 33.2 The Consultant shall coordinate its Work with that of other consultants and contractors on the Site and shall cooperate fully with the Trust in maintaining orderly progress towards completion of the Project as scheduled. The Consultant acknowledges that coordination with other consultants, contractors, the Trust or its affiliates and occasional rescheduling of the Work or Project may be required and that minor delays in performance of the Work may result. Any difference or conflict which may arise between the Consultant and other consultants or contractors, or between the Consultant and workmen of the Trust or its affiliates, in regard to their work, shall be resolved as determined by the Trust. The Trust's decision regarding priority between Consultant's Work and the work of other consultants or contractors at the Site shall be final. Notwithstanding any other provision of the Agreement, the Consultant acknowledges that such coordination, occasional rescheduling and minor delays shall not justify an increase in the price as determined under the Agreement or an extension of time for delivery or performance.
- 33.3 If the Consultant's Work depends upon the work of others, the Consultant shall inspect and give the Trust prompt written notice of any defects in the work, of which Consultant knows or should have known based on reasonable investigation, that renders it unsuitable for the Consultant to perform the Work.

### **ARTICLE 34 RECORDS AND ACCOUNTS**

- 34.1 The Consultant shall maintain accurate and specific records in connection with the Work performed and all transactions related thereto. The Trust or its attorneys or its accountants reserves the right to, upon reasonable notice, review, inspect, copy and audit the Consultant's records during the term of the Agreement and for up to five years after the completion of all Work under any and all WA's. The Consultant shall provide in all its contracts, agreements, or retainers with Subcontractors that the Trust shall have the right to audit all source documentation of Subcontractor's compensation.
- 34.2 The Consultant shall prepare and maintain detailed accounting records of all actual, reasonable, and necessary direct and indirect labor, subcontracted labor, purchased materials, overhead and general administrative charges, and reimbursable expenses properly allocable to Work performed hereunder. Such records shall be maintained in accordance with sound cost-accounting practices of the industry and generally accepted accounting principles, shall be of such accuracy and detail. Consultant shall upon request permit or arrange for the Trust to have access to and to audit at all reasonable times all such records, correspondence, account books, purchase orders, subcontracts, invoices, canceled checks, payroll details (records/register), and other records directly relating in any way to all Work performed under the Agreement and/or any WA(s) issued thereunder.
- 34.3 If and as applicable, Consultant shall maintain complete records of the chain of custody and control of all environmental samples and waste materials handled, transported, and/or disposed of as a result of Consultant's activities under the Agreement, and Consultant shall deliver all such records pertaining to any individual WA to the Trust in accordance with instructions from the Trust and

when requested by the Trust, but in no event later than the time when Consultant's performance pursuant to any WA has been completed.

- 34.4** The Trust shall give the Consultant and Subcontractors reasonable notice of any intended inspection or audit of their records.
- 34.5** The Trust and its authorized representative shall have access, during normal working hours, to all necessary Consultant and Subcontractor facilities and shall be provided with work space in order to conduct inspections and audits of such records.
- 34.6** The Consultant shall require Subcontractors to comply with the provisions of this Article for the benefit of the Trust.
- 34.7** Due to the need to ensure that records generated during the performance of each Project are maintained in an appropriate, effective and organized manner with respect to document retention requirements imposed by law as well as the Trust's auditing requirements, the following guidelines apply to all Project records maintained by Consultant including typed documents, handwritten communications and notes, tapes and electronically stored information or data.
- 34.7.1. Drafts** – Except as may be otherwise required under or pursuant to the EPA's Unilateral Order and EPA regulations and requirements pertaining to the project, only finalized documents shall be retained. Draft documents (including paper and electronic copies, and any annotated copies containing comments or other markings) shall be destroyed in accordance with Consultant's record retention policy or six months after the final document is created, whichever is the greater period.
- 34.7.2. Meeting Notes, Logs, Records of Communication** – Except as may be otherwise required under or pursuant to the EPA's Unilateral Order and EPA regulations and requirements pertaining to the project, all documents prepared internally by Consultant such as meeting notes, records of communication (e.g. telecoms) and other similar documents shall be maintained in accordance with Consultant's record retention policy but for not less than two years after completion of Consultant's last WA under this Agreement.
- 34.7.3. Accounting Records** – The Consultant shall maintain detailed accounting records of all actual, reasonable, and necessary direct and indirect labor, subcontracted labor, purchased materials, overhead and general administrative charges, and reimbursable expenses properly allocable to work performed under the Agreement. All such records shall be maintained for a period of at least five (5) years (or such longer period as reasonably specified by the Trust following completion of any Project for which Work has been performed under the Agreement).
- 34.7.4. Insurance Records** – The Consultant shall maintain all records evidencing required insurance coverage under the Agreement for a period of at least five (5) years or such longer period as reasonably specified by the Trust following completion of any Project for which Work has been awarded under the Agreement.
- 34.7.5. Patents, Licenses** – The Consultant shall maintain all records relating to any patents or licenses used in connection with Work performed under this Agreement for a period of at least seven (7) years following completion of any Project for which such Work has been awarded under the Agreement.
- 34.7.6. Final Documents** – The Consultant shall maintain all final documents indefinitely in accordance with Consultant's record retention policy, unless disposed of as set forth in 34.8 below. Such documents shall be maintained in paper form as well as in any electronic form that may be created.

- 34.7.7. Documents Prepared by Others – Documents prepared by others and reviewed by Consultant shall be subject to Consultant’s document retention policy provisions.
- 34.7.8. Confidential Documents – Any confidential correspondence or documentation prepared by or received by Consultant should be clearly marked as such and should be maintained in a secure and protected filing system, separate from other Project documentation.
- 34.7.9. Legal Requirements – Record retention procedures are necessary to ensure that records are kept according to the requirements of governmental agencies. To the extent that Consultant’s document retention policy provisions are not consistent with legal requirements with respect to record retention, Consultant shall comply with applicable legal requirements of government agencies. The Trust shall provide to consultant the legal requirements of government agencies prior to the WA.
- 34.7.10. Matters in Litigation – With respect to documents related to matters involved in litigation, Consultant and its counsel shall consult with the Trust and its counsel as to whether modifications to these guidelines are appropriate.

34.8 In the event that Consultant wishes to dispose of such records, Consultant shall first furnish the Trust at least ninety (90) Days advance written notice of such intent, and the Trust shall have the right (but not the obligation), at its sole cost and expense, to take possession of such records and to arrange for their delivery to the Trust.

**ARTICLE 35 NOTICES**

35.1 All notices, demands, requests, and other communications required or desired to be given hereunder must be in writing and sent by United States registered mail, return receipt requested, or by nationally recognized overnight carrier as follows::

To the Trust:

\_\_\_\_\_

with a copy to

\_\_\_\_\_

To the Consultant:

\_\_\_\_\_

with a copy to

\_\_\_\_\_

Notices properly addressed and stamped shall be deemed received by the addressee on the Day of actual receipt. Express-type courier service and facsimile notices shall be deemed to have been received at the end of the first business day following the actual date of delivery by such courier or of transmission. Any provision of this Contract that requires a notice by Consultant is not deemed by the Parties hereto to be a mere formality or technicality, but rather is essential to the relationship between the Parties and shall be adhered to strictly.

## **ARTICLE 36 EQUAL EMPLOYMENT OPPORTUNITY**

- 36.1** The Consultant shall comply with all applicable federal, state and local anti-discrimination laws, the standards and regulations issued thereunder and the amendments thereto, including Executive Order 11141 relating to age discrimination, Executive Order 11246 relating to equal employment opportunity, Executive Order 11625 relating to minority business enterprise, Executive Order 11701 relating to employment of veterans and Executive Order 11758 relating to handicapped employment. The aforementioned are incorporated herein as if set forth herein verbatim. The Consultant agrees to comply with the Human Rights Law of the State of New York (Section 15 of the Executive Law), if applicable.
- 36.2** All subcontracts and agreements that the Consultant enters into to provide the Work under the terms of the Agreement shall obligate such Subcontractors to comply with the foregoing provisions.

## **ARTICLE 37 MISCELLANEOUS**

- 37.1** The Agreement constitutes the entire Agreement between the Trust and the Consultant with respect to the Work specified, and all previous representations relative thereto, either written or oral are hereby annulled and superseded. No modification of any of the provisions of the Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.
- 37.2** Each and every provision of law and governmental regulation required by law to be inserted in the Agreement is deemed inserted and the Agreement will be read and enforced as though the same were so included in the Agreement. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, then, upon the application of either party, the Agreement shall be deemed to be amended to make such insertion or correction.
- 37.3** If any section, phrase, provision or portion of the Agreement is, for any reason, held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such section, phrase, provision or portion so adjudged will be deemed separate, distinct and independent and the remainder of the terms of the Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication. The Parties shall negotiate in good faith an equitable adjustment in the affected provision of the Agreement; however, the validity and enforceability of the remaining parts thereof shall be otherwise fully enforceable.
- 37.4** The Consultant is, and shall at all times remain, an independent contractor.
- 37.5** Paragraph headings are for the convenience of the Parties only and are not to be construed as part of the Agreement.
- 37.6** No delay or omission in the exercise of any right under the Agreement will impair any such right or will be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. No waiver, consent or modification of any of the provisions of the Agreement shall be binding unless in writing and signed by the Trust and the Consultant. If any of the provisions of the Agreement are breached and thereafter waived, such waiver will be limited to the particular breach so waived and will not be deemed to be a waiver of any other breach under the Agreement.
- 37.7** The Consultant shall conduct itself in an ethical manner and provide services to the highest ethical standards. The Consultant shall not be a party to the following: bribery of any kind; collusion with other contractors, regulatory agencies or other third parties; provision of enticements to the Trust's and grantors to the Trusts representatives, officers, directors, employees, agents, successors, assigns, and servants in any form including, but not limited to, gifts, gratuities or other benefits. Without limiting the foregoing, the Consultant represents and warrants to the Trust that the Consultant, its

Subcontractors a, its and their affiliates, employees, officers, agents and shareholders, have not committed and shall not commit any Prohibited Act.

#### **ARTICLE 38 JURISDICTION AND GOVERNING LAWS**

- 38.1** The Agreement shall be deemed to be executed in the State of New York and shall be interpreted and enforced according to the laws of the State of New York, excluding its 'conflicts of law' jurisprudence.
- 38.2** Only the courts of New York shall have jurisdiction over the Agreement and any controversies arising out of the Agreement; any controversies arising out of the Agreement shall be submitted only to the courts of New York; the Consultant hereby submits to the courts of New York for the purposes of interpretation and enforcement of the Agreement.
- 38.3** The Consultant hereby waives personal service by manual delivery and agrees that service of process on the Consultant in any action arising out of the Agreement may be made by registered or certified mail, return receipt requested, directed to the Consultant at its address set forth on the Agreement.
- 38.4** To the extent permitted by law, Consultant waives knowingly and voluntarily for itself and all persons claiming by or through it, all right to trial by jury in any judicial proceedings.
- 38.5** Consultant agrees to cooperate in testifying, either in court or at a hearing or deposition, in connection with matters covered by the Agreement or arising out of the Project. Provided that Consultant is not itself a party to the proceeding, it shall be reimbursed for preparatory and testifying time of its officers or employees at the rates payable under this agreement for contract work, or a reasonable rate, whichever is less, and for actual out of pocket expenses, if any.
- 38.6** The Consultant consents to, and waives all objections to, joinder of the Consultant as a party to any Project-related mediation, arbitration, or litigation in which the Trust is joined or is otherwise positioned as a party or in which the Consultant's conduct or its performance of professional services is in any way relevant in the Trust's opinion to the subject of a dispute.

#### **ARTICLE 39 LIMITATION OF REMEDIES**

- 39.1** The Consultant shall present in writing any claim for additional compensation which Consultant may have against the Trust not later than five (5) Days after the first occurrence, event or circumstance which gives rise to such claim. The claim shall contain a concise statement of the question or dispute and relevant facts and data (including the applicable Agreement or WA provision) which support the claim. Consultant shall furnish any additional information which the Trust may require to enable it to evaluate and decide on the claim. UNLESS OTHERWISE ADDRESSED HEREIN, FAILURE BY CONSULTANT TO SUBMIT ANY CLAIM IN SAID FIFTEEN (15)-DAY PERIOD SHALL CONSTITUTE A WAIVER ON THE CONSULTANT'S PART FOR ENTITLEMENT TO EITHER ADDITIONAL REIMBURSEMENT OR ADDITIONAL TIME FOR PERFORMANCE OF SUCH WORK.
- 39.2** The period of limitation for commencement of any action by Consultant against the Trust shall commence to run at substantial completion by Consultant of the Work performed under the WA out of which the action arises, or termination or abandonment thereof by either Party. Notwithstanding any contrary or different period of limitation provided by statute, no action may be asserted by Consultant against the Trust later than one year after such substantial completion date.
- 39.3** Except to the extent that an element of profit is included in the price for the Work as determined under the Agreement and such amounts are past due and owing to the Consultant for Work actually performed, the Trust shall not be liable to the Consultant for claims of lost profits, whether such

claims of lost profits are categorized under the Agreement as direct or consequential damages, or whatever the theory of recovery (including without limitation breach of contract, negligence, or other tort).

- 39.4** In no case shall the Trust's liability to the Consultant exceed the price for Work as determined under the Agreement for each relevant WA.
- 39.5** Except to the extent that economic or other loss or damage sustained by Consultant in the performance of this Agreement is caused by act or neglect of the Trust or is compensable under express provisions of this Agreement, such loss or damage shall be borne solely by Consultant.
- 39.6** The Trust's rights and remedies hereunder shall be cumulative and not exclusive of each other and may be pursued separately or concurrently as the Trust determines.



**EXHIBIT A**  
**SCOPE OF WORK**

[TO BE INSERTED]

**EXHIBIT B**  
**FROM OF WORK AUTHORIZATION**

[TO BE INSERTED]

**EXHIBIT C**  
**RATE SHEET**

[TO BE INSERTED]

**EXHIBIT D**  
**INSURANCE REQUIREMENTS**

A. From the commencement of the Agreement, through final expiration or longer where specified below, the Consultant shall provide and maintain, at its own expense, and shall require all Subcontractors to provide and maintain, insurance policies, intended to be primary and non-contributory (with no right of contribution by any other coverage available to the Insured Parties), covering all Work (as defined in the Agreement, and including without limitation professional services) to be performed under or in connection with this Agreement, issued by reputable insurance companies with an A.M. Best rating of A-/VII or better which meets or exceeds the requirements listed herein. Such policies, where required below shall include the Insured Parties outlined in Exhibit G as Additional Insureds. Waiver of Subrogation, where required below shall be in favor of such Additional Insureds/Insured Parties for any loss or damage covered under those policies referenced in this Insurance Exhibit, or for any required coverage that may be self-insured by Consultant.

1. Risk of Loss (Equipment/Materials): The Consultant shall be responsible for all risk of loss to its personal equipment and materials, and any other equipment and materials owned by its employees or by third parties that may be in their care, custody and control. Waiver of Subrogation required in favor of the Insured Parties outlined in **Exhibit G**.
2. Workers Compensation and Employers Liability Insurance as required by Applicable Law, in the state in which the operations, work and/or provision of services will be performed under this Agreement. The employer's liability limit shall be at least \$1,000,000 per occurrence for bodily injury, per employee for bodily injury by disease and by bodily injury by disease policy limit. For work or services being performed on or close to water, policy shall include coverage for the US Longshoreman & Harbor Workers' Compensation Act of 1927 and Jones Act of 1920.

In the event Consultant is a Sole Proprietor that is exempt from maintaining Statutory Workers' Compensation/Employer's Liability insurance, Sole Proprietor is required to provide a Letter of Affidavit affirming no employees and are exempt from carrying Workers Compensation and Employer's Liability insurance.

Waiver of Subrogation required in favor of the Insured Parties outlined in **Exhibit G**.

3. Commercial Automobile Liability: covering all owned, non-owned and hired vehicles used in connection with all Work to be performed by or on behalf of Consultant with minimum limits of:

Combined Single Limit	\$1,000,000 per occurrence
-----------------------	----------------------------

Coverage for non-owned/hired vehicles evidenced through a Commercial General Liability policy would be acceptable upon Trust's review and approval. Additional Insured and Waiver of Subrogation required for the Insured Parties outlined in **Exhibit G**.

4. Commercial General Liability Insurance ("CGL"): covering all Work to be performed under the Agreement, with minimum limits of:

Combined Single Limit:	\$1,000,000 per occurrence
General Aggregate and Product/ Completed Operations Aggregate:	\$2,000,000

The CGL policy shall include Contractual Liability (with this Agreement being included under the definition of "Insured Contract" thereunder) and no action over exclusion, Products-Completed Operations coverage, Site Liability and, if applicable, explosion, collapse, and underground coverage ("XC&U"). CGL shall be written on an occurrence basis and Completed operations coverage shall be maintained continuously until the later of: (a) three years post completion of Work, or (b) the applicable state statute of repose.

Consultant/Contractor's protective (Independent Contractors) coverage in all cases where Subcontractors are to perform any of the Work to be performed by or on behalf of the Contractor under or in connection with this Agreement. A liability insurance policy containing an annual aggregate limit of liability shall be amended to reflect that the annual aggregate limit applies on a per project basis. Additional Insured and Waiver of Subrogation required for the Insured Parties outlined in **Exhibit G**. Must use CG 20 10 and CG 20 37 or equivalent for Additional Insured endorsements.

5. **Umbrella or Excess Liability**: with a minimum per occurrence limit of: \$5,000,000. This coverage shall run concurrent to the CGL required in **Paragraph 4** of this Exhibit above, shall apply excess of the required CGL, automobile, and employer's liability coverage required, and shall provide Additional Insured status as required in this Agreement. Umbrella or Excess Liability shall be written on a follow form basis and shall not contain any exclusions or limitations that are not in the underlying policies. Additional Insured and Waiver of Subrogation required for the Insured Parties outlined in **Exhibit G**.
6. **Professional Liability Insurance**: providing coverage for negligent acts, errors, and omissions (including when applicable, Technology errors and omissions), in an amount of \$3,000,000 "per claim" or equal to the value of the contract, whichever is greater, to protect the Trust and any other Insured Parties from losses arising out of the use of Consultant's product or failure to render services.

Should coverage be written on a "Claims Made" form, Consultant or its subcontractors shall maintain such coverage for a period of not less than three (3) years post completion of work, with the retroactive date in place prior to and held constant with the date of this contract. Waiver of Subrogation required from this policy for the Insured Parties outlined in **Exhibit G**.

- B. **Subcontractors**. In the event that the Consultant uses a Subcontractor(s) in connection with providing any services as outlined under this Agreement, the Consultant shall require all such subcontractor(s) to provide the same insurance coverages and protections as outlined within and as applicable to their portion of Work. The Consultant shall remain liable for the performance of each Subcontractor, and such contract relationship shall not relieve the Consultant of its obligations under this Agreement. In addition, each Subcontractor shall be required to provide a waiver of subrogation and name the Trust and its Insured Parties as outlined in Exhibit G and Consultant as Additional Insureds where required. If requested, Consultant will provide Trust with a certificate of insurance from its Subcontractor evidencing such coverages.
- C. Prior to the start of Work, Consultant and, if requested by Trust, any Subcontractors they hire shall promptly provide the Trust with Certificate(s) of Insurance for all coverages required in the Agreement at the address Gowanus Canal Environmental Remediation Trust, c/o de maximis, inc., 450 Montbrook Lane, Knoxville, TN 37919-2705. All such policies, except professional liability policies, shall be written on an occurrence basis. Claims-made basis policies shall be acceptable for professional liability policies only. Commencement of Work without the required Certificates of Insurance, or without compliance with any other provision of the Contract Documents, shall not constitute a waiver by the Trust of any rights contained in the Contract Documents.
- D. Policies shall provide that at least thirty (30) Days prior written notice shall be given to the Trust in the event of any cancellation or diminution of coverage and certificates shall outline the amount of deductibles or self-insured retentions which shall be for the account of the Consultant. Such deductibles or self-insured retentions shall not exceed \$100,000 unless agreed to by the Trust.
- E. As indicated above, the Consultant, its Subcontractors and their respective insurance carrier(s) shall waive all rights of recovery against the Insured Parties and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by the Consultant. To the extent the Consultant and/or its Subcontractor(s) insurance carriers will not waive their right of subrogation against the Insured Parties, the Consultant agrees to indemnify the Insured Parties for any subrogation activities pursued against them by the Consultant and/or its Subcontractor(s) insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Insured Parties or their employees, subcontractors or agents. This release and waiver shall survive the termination or expiration of the Agreement.

- F. The Consultant shall furnish the Trust with copies of any accident report(s) sent to the Consultant's or its Subcontractor(s) insurance carriers covering accidents, incidents or events occurring in connection with or as a result of the provision of the Work pursuant to the notices provisions in the Agreement. If the Trust and/or any of the Insured Parties are named in a lawsuit involving the operations and activities of the Consultant or its Subcontractor(s) associated with this Agreement, the Consultant shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by Trust.
- G. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Consultant's responsibility for payment of damages resulting from its work under the Agreement, or limiting, diminishing, or waiving the Consultant's obligation to indemnify, defend and save harmless the Trust and the Indemnified Parties in accordance with the Agreement.
- H. If any of the required insurance coverages contain aggregate limits applying to other operations of Consultant outside of the Work performed for the Trust and such limits are diminished by any incident, occurrence, claim, settlement, or judgment against such insurance, Consultant shall notify the Trust and take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.
- I. Failure to obtain and maintain the required insurance shall constitute a breach of contract, unless a written waiver of the specific insurance requirement is provided to Consultant by the Trust.
- J. Failure of Consultant to provide insurance as herein required or failure of the Trust to require evidence of insurance or to notify Consultant of any breach by Consultant of the requirements of this Exhibit shall not be deemed to be a waiver by the Trust of any of the terms of the Contract Documents. The obligation to procure and maintain any insurance required is a separate responsibility of Consultant and independent of the duty to furnish a certificate of such insurance.
- K. In the event of any failure by Consultant to comply with the insurance requirements set forth herein, the Trust may, without in any way compromising or waiving any right or remedy at law or in equity, upon five (5) Days' written notice to Consultant, purchase such insurance, at Contractor's expense, provided that the Trust shall have no obligation to do so, and, if the Trust shall do so, Consultant shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such costs incurred by the Trust shall be promptly reimbursed by Consultant and/or may be withheld from any payment due Consultant.
- L. All policies of insurance shall be endorsed so as to specifically cover each WA as of the effective date of such WA.

**EXHIBIT E**  
**TRUST'S SAFETY REQUIREMENTS**

[TO BE INSERTED]



**EXHIBIT F**  
**FORM OF BACKGROUND CHECK**

[TO BE INSERTED]

**EXHIBIT G**  
**INDEMNITEES AND INSURED PARTIES**

[TO BE INSERTED]

**EXHIBIT H**  
**FORM OF LIEN WAIVERS AND RELEASES**

*See the following pages.*

**CONSULTANT FORM OF PARTIAL LIEN WAIVER AND RELEASE**

This affidavit is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, to \_\_\_\_\_ (“Trust”) by \_\_\_\_\_ (“Consultant”) for furnishing professional services rendered in connection with \_\_\_\_\_ (the “Project”) located at \_\_\_\_\_ (the “Site”) pursuant to an agreement between Consultant and Trust dated \_\_\_\_\_, as amended (the “Agreement”).

Total Contract Value: \$ \_\_\_\_\_  
Total Payment(s) Received to Date: \$ \_\_\_\_\_  
Partial Payment: \$ \_\_\_\_\_  
Cumulative Payment: \$ \_\_\_\_\_ (Total Payment(s) Received to Date + Partial Payment)

**Unconditional Waiver and Release for Total Payment(s) Received to Date:** For and in consideration of the Total Payment(s) Received to Date, representing the total amount presently paid to date for professional services rendered to the Trust under the Agreement, receipt of which Total Payment(s) Received to Date Consultant hereby acknowledges; Consultant does hereby waive, release, remise and relinquish the right to claim or file a mechanic’s or other lien against the Property or any part thereof for all professional services furnished by Consultant, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Consultant, up through and including the date of the last paid invoice dated \_\_\_ day of \_\_\_\_\_, 20\_\_.

**Conditional Waiver and Release for Partial Payment:** Upon Consultant’s receipt of the Partial Payment, representing the amount presently due under Invoice # \_\_\_ dated \_\_\_ day of \_\_\_\_\_, 20\_\_ (“Payment Application Date”), Consultant does hereby waive, release, remise and relinquish the right to claim or file a mechanic’s or other lien against the Property or any part thereof for all professional services furnished by Consultant, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Consultant, up through and including the Payment Application Date.

The above waivers and releases exclude only claims currently unresolved for the total amount of \_\_\_\_\_ (\$\_\_\_\_\_) (include amount of any unresolved claims or state “None”) as described on Attachment 1 hereto and for which written notice has been provided to the Trust.

Consultant hereby agrees to indemnify and hold harmless the Trust, all entities listed as Indemnified Parties in the Agreement, and all of their respective parent firms, subsidiaries, affiliates, owners, shareholders, officers, directors, principals, partners, members and managers, from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party that directly or indirectly relates to or arises out of the work or services furnished by Consultant and/or its agents, subconsultants, subcontractors or vendors, and any claim that directly or indirectly relates to any extra or additional work or services allegedly performed or furnished by Consultant and/or its agents, subconsultants, subcontractors or vendors. Consultant hereby certifies and warrants that it has fully paid to date all subconsultants, subcontractors and vendors in connection with the aforesaid Project, except for those listed below (List all payables or state “None”):  
\_\_\_\_\_.

**IN WITNESS WHEREOF**, this affidavit and the waivers and releases herein have been executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Consultant: \_\_\_\_\_

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)  
(Note: include Attachment 1 hereto)

**SUBCONTRACTOR FORM OF PARTIAL LIEN WAIVER AND RELEASE**

This affidavit is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, to \_\_\_\_\_ (“General Contractor” or “Construction Manager”) by \_\_\_\_\_ (“Subcontractor”) for furnishing of work, labor, services, materials and/or equipment in connection with the development and construction of \_\_\_\_\_ (the “Project”) located at \_\_\_\_\_ (the “Property”) pursuant to an agreement between Subcontractor and General Contractor dated \_\_\_\_\_, as amended (the “Agreement”).

Total Contract Value: \$ \_\_\_\_\_  
Total Payment(s) Received to Date: \$ \_\_\_\_\_  
Partial Payment: \$ \_\_\_\_\_  
Cumulative Payment: \$ \_\_\_\_\_ (Total Payment(s) Received to Date + Partial Payment)

**Unconditional Waiver and Release for Total Payment(s) Received to Date:** For and in consideration of the Total Payment(s) Received to Date, representing the total amount presently paid to date for work, labor, services, materials and/or equipment furnished to General Contractor under the Agreement, receipt of which Total Payment(s) Received to Date Subcontractor hereby acknowledges; Subcontractor does hereby waive, release, remise and relinquish the right to claim or file a mechanic’s or other lien against the Property or any part thereof for all work, labor, services, materials and/or equipment furnished by Subcontractor, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Subcontractor, up through and including the date of the last paid invoice dated \_\_\_ day of \_\_\_\_\_, 20\_\_.

**Conditional Waiver and Release for Partial Payment:** Upon Subcontractor’s receipt of the Partial Payment, representing the amount presently due under Invoice # \_\_\_ dated \_\_\_ day of \_\_\_\_\_, 20\_\_ (“Payment Application Date”), Subcontractor does hereby waive, release, remise and relinquish the right to claim or file a mechanic’s or other lien against the Property or any part thereof for all work, labor, services, materials and/or equipment furnished by Subcontractor, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Subcontractor, up through and including the Payment Application Date.

The above waivers and releases exclude only claims currently unresolved for the total amount of \_\_\_\_\_ (\$\_\_\_\_\_) (include amount of any unresolved claims or state “None”) as described on Attachment 1 hereto and for which written notice has been provided to General Contractor.

Subcontractor hereby agrees to indemnify and hold harmless General Contractor, all entities listed as indemnified parties in the Agreement, fee owner of the Property, landlord and tenant of the Property if the Property is subject to a lease, and all of their respective parent firms, subsidiaries, affiliates, owners, shareholders, officers, directors, principals, partners, members and managers, from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party that directly or indirectly relates to or arises out of work, labor, services, materials and/or equipment performed or furnished by Subcontractor and/or its agents, sub-subcontractors or vendors, and any claim that directly or indirectly relates to any extra or additional work, labor, services, materials and/or equipment allegedly performed or furnished by Subcontractor and/or its agents, sub-subcontractors or vendors. Subcontractor hereby certifies and warrants that it has fully paid to date all sub-subcontractors and vendors in connection with the aforesaid Project, except for those listed below (List all payables or state “None”):

\_\_\_\_\_.

**IN WITNESS WHEREOF**, this affidavit and the waivers and releases herein have been executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 20\_\_.  
\_\_\_\_\_  
(Notary Public)  
*(Note: include Attachment 1 hereto)*

Subcontractor: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONSULTANT FORM OF FINAL LIEN WAIVER AND RELEASE**

This affidavit is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, to \_\_\_\_\_ (the "Trust") by \_\_\_\_\_ ("Consultant") for furnishing professional services rendered in connection with \_\_\_\_\_ (the "Project") located at \_\_\_\_\_ (the "Site") pursuant to an agreement between Consultant and the Trust dated \_\_\_\_\_, as amended (the "Agreement").

Total Contract Value: \$ \_\_\_\_\_  
Total Payment(s) Received to Date: \$ \_\_\_\_\_  
Final Payment: \$ \_\_\_\_\_  
Cumulative Payment: \$ \_\_\_\_\_ *(Total Payment(s) Received to Date + Final Payment)*

For and in consideration of the sum of the Final Payment, which together with the Total Payment(s) Received to Date equals 100% of the Total Contract Value, such Final Payment being the amount presently approved as the final and total amount payable for all work and services furnished to the Trust pursuant to the Agreement under Invoice # \_\_\_\_\_ dated \_\_\_\_\_, the receipt of the Final Payment, by Consultant from the Trust, is hereby acknowledged; Consultant does hereby waive, release, remise and relinquish the right to claim or file a mechanic's or other lien against the Property or any part thereof for all work and services furnished by Consultant, and does so covenant in recognition of the fact that Final Payment and the Total Contract Value has been received for all work and services supplied by Consultant, including any claims for extra or additional work or services or any other damage or expense alleged to have been incurred by Consultant, up through and including the date of this affidavit.

Consultant hereby agrees to indemnify and hold harmless the Trust, all entities listed as Indemnified Parties in the Agreement, and all of their respective parent firms, subsidiaries, affiliates, owners, shareholders, officers, directors, principals, partners, members and managers (collectively, "Trust Parties"), from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party that directly or indirectly relates to or arises out of work or services furnished by Consultant and/or its agents, subconsultants, subcontractors or vendors and any claim that directly or indirectly relates to any extra or additional work or services allegedly performed or furnished by Consultant and/or its agents, subconsultants, subcontractors or vendors. Consultant hereby certifies and warrants that it has fully paid to date all subconsultants, subcontractors and vendors in connection with the aforesaid Project, except for those listed below *(List all payables or state "None")*:

\_\_\_\_\_.

Consultant releases and discharges the Trust Parties from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, arising from or in connection with the Project or the Site which against the Trust Parties, Consultant ever had, now have or hereafter can, shall or may have, for upon, or by reason of any matter, claims or causes of action whatsoever from the beginning of the world to the date of this affidavit.

The above waivers and releases exclude only claims currently unresolved for the total amount of \_\_\_\_\_ (\$ \_\_\_\_\_) *(include amount of any unresolved claims or state "None")* as described on Attachment 1 hereto and for which written notice has been provided to the Trust.

**IN WITNESS WHEREOF**, this affidavit and the waivers and releases herein, have been executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
\_\_\_\_\_  
(Notary Public)  
*(Note: include Attachment 1 hereto)*

Consultant: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SUBCONTRACTOR FORM OF FINAL LIEN WAIVER AND RELEASE**

This affidavit is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to \_\_\_\_\_ (“General Contractor” or “Construction Manager”) by \_\_\_\_\_ (“Subcontractor”) for furnishing work, labor, services, materials and/or equipment in connection with the development and construction of \_\_\_\_\_ (the “Project”) located at \_\_\_\_\_ (the “Property”) pursuant to an agreement between Subcontractor and General Contractor dated \_\_\_\_\_, as amended (the “Agreement”).

Total Contract Value:                           \$ \_\_\_\_\_  
 Total Payment(s) Received to Date:       \$ \_\_\_\_\_  
 Final Payment:                                   \$ \_\_\_\_\_  
 Cumulative Payment:                           \$ \_\_\_\_\_ (Total Payment(s) Received to Date + Final Payment)

For and in consideration of the sum of the Final Payment, which together with the Total Payment(s) Received to Date equals 100% of the Total Contract Value, such Final Payment being the amount presently approved as the final and total amount payable for work, labor, services, materials and/or equipment furnished to General Contractor pursuant to the Agreement under Invoice #\_\_\_\_\_ dated \_\_\_\_\_, the receipt of the Final Payment, by Subcontractor from General Contractor, is hereby acknowledged; Subcontractor does hereby waive, release, remise and relinquish the right to claim or file a mechanic’s or other lien against the Property or any part thereof for all work, labor and services, furnished by Subcontractor, and does so covenant in recognition of the fact that Final Payment and the Total Contract Value has been received for all work, labor and services supplied by Subcontractor, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Subcontractor, up through and including the date of this affidavit.

Subcontractor hereby agrees to indemnify and hold harmless General Contractor, all entities listed as indemnified parties in the Agreement, fee owner of the Property, landlord and tenant of the Property if the Property is subject to a lease, and all of their respective parent firms, subsidiaries, affiliates, owners, shareholders, officers, directors, principals, partners, members and managers (collectively, “GC Parties”), from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party that directly or indirectly relates to or arises out of work, labor, services, materials and/or equipment performed or furnished by Subcontractor and/or its agents, sub-subcontractors or vendors and any claim that directly or indirectly relates to any extra or additional work, labor, services, materials and/or equipment allegedly performed or furnished by Subcontractor and/or its agents, sub-subcontractors or vendors. Subcontractor hereby certifies and warrants that it has fully paid to date all sub-subcontractors and vendors in connection with the aforesaid Project, except for those listed below (*List all payables or state “None”*):

\_\_\_\_\_.

Subcontractor releases and discharges GC Parties from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, arising from or in connection with the Project or the Property which against GC Parties, Subcontractor ever had, now have or hereafter can, shall or may have, for upon, or by reason of any matter, claims or causes of action whatsoever from the beginning of the world to the date of this affidavit.

The above waivers and releases exclude only claims currently unresolved for the total amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (*include amount of any unresolved claims or state "None"*) as described on Attachment 1 hereto and for which written notice has been provided to General Contractor.

**IN WITNESS WHEREOF**, this affidavit and the waivers and releases herein, have been executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 \_\_\_\_\_ (Notary Public)  
 (*Note: include Attachment 1 hereto*)

Subcontractor: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_