

NEW YORK STATE HOMELESS HOUSING AND ASSISTANCE CORPORATION
HOMELESS HOUSING AND ASSISTANCE PROGRAM

Supplementary General Conditions

Rider to AIA A201-2007, General Conditions of
the Contract for Construction, 2007 Edition.

This Rider is attached to and made a part of the GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION (the "Contract") for the construction or rehabilitation of City of _____, New York (the "Project"). The parties hereto agree that the following covenants, terms, and conditions shall be part of and shall modify or supplement the Contract, and that in the event of any inconsistency or conflict between the covenants, terms, and conditions of the Contract and this Rider, the covenants, terms, and conditions of this Rider shall control and prevail.

Article 1 GENERAL PROVISIONS

Modify **Article 1** by adding the following Sections.

§ 1.7. Homeless Housing and Assistance Corporation Agreement

§ 1.7.1 All or part of the Work to be performed under this Contract is to be paid for with funds provided by the State of New York pursuant to an agreement (hereinafter referred to as the "HHAC Agreement") between the Owner and the New York State Homeless Housing and Assistance Corporation (hereinafter referred to as the "Corporation or HHAC"). The provisions of the HHAC Agreement as they relate to the work under this Contract include the following:

- .1 The Owner is responsible for development of the project premises in conformance with the budget and description of the work to be undertaken in the HHAC Agreement and with the terms of that agreement.
- .2 The HHAC Agreement establishes a fixed dollar amount, which the Corporation will make available to the Owner, subject to the availability of State funds, for the work to be undertaken by the Owner pursuant to the HHAC Agreement. In the event that the Owner's costs increase, the Corporation has no obligation to agree to an amendment of the HHAC Agreement or to increase the amount of money that it makes available to the Owner.
- .3 Contracts that the Owner enters into relating to the work to be undertaken pursuant to the HHAC Agreement are subject to the Corporation's prior approval, and must contain provisions allowing the Corporation, at its option, to require the assignment by the Owner of its rights in such contracts to the Corporation.

- .4 Except in the event that the Corporation exercises its option to require the Owner to assign the Contract to the Corporation, nothing in any contract or agreement which the Owner enters into in discharging its obligation under the HHAC Agreement may either create any contractual relationship between the Contractor and the Corporation, or in any way impair the Corporation's rights under the HHAC Agreement.
- .5 The Owner is fully responsible to the Corporation under the HHAC Agreement for the acts and omissions of any party employed by the Owner, directly or indirectly, to carry out its obligations under the HHAC Agreement.
- .6 The Owner has agreed to comply with any directive issued to it by the Corporation, which the Corporation deems necessary to insure compliance with the terms of the HHAC Agreement.
- .7 The Corporation will pay the Owner for work completed in satisfaction of the Owner's obligations under the HHAC Agreement on a periodic basis in accordance with the approved budget and work plan upon submission of a properly executed claim in a form acceptable to the Corporation. Claims shall be supported by such documentation as the Corporation may require and the Corporation may conduct inspections, tests or reviews of the activities for which payment is requested to determine whether such activities have been properly performed before approving payment.
- .8 The Corporation will not pay the Owner for inferior or defective work.
- .9 All references to the Dormitory Authority of the State of New York (hereinafter referred to as "DASNY") herein provided, shall also include any HHAC approved Architectural Consultant if applicable.

§ 1.7.2 The Owner is also required under the HHAC Agreement to include in any construction contract various provisions relating to the Corporation and its role and that of its representatives in monitoring the Work under this Contract which relate to the Owner's obligations under the HHAC Agreement. Therefore, it is agreed as follows:

- .1 The Contractor may, prior to the execution of the Contract or at any time during the Contract, upon request, examine a copy of the HHAC Agreement.
- .2 Nothing in this Agreement in any way curtails or diminishes the Corporation's rights and the Owner's obligations under the HHAC Agreement.
- .3 The Contractor acknowledges and assents to the Corporation's option to direct the Owner to assign to the Corporation or its agent the Owner's rights and interest in this Contract.
- .4 Except in the event that the Corporation exercises its option to require the Owner to assign this Contract to the Corporation, nothing contained in this Contract shall

create any contractual relationship between the Contractor and the State of New York, the Corporation, or DASNY.

- .5 The Work to be performed under this Contract will be monitored for the Corporation by representatives of DASNY. The Contractor shall allow DASNY representatives to review and inspect the Work as it progresses. Failure of the Owner to pay the Contractor for a Certificate for Payment or amount disputed by the DASNY representative shall not constitute Failure of Payment.
- .6 The architect shall review Applications for Payment as described in Article 9. In addition, the DASNY representative, acting on behalf of the Corporation, shall review Certificates for Payment issued by the Architect. Payments from the Corporation to the Owner shall be based on the DASNY representative's acceptance of Certificates for Payment, in order to prevent loss for any of the reasons stated in Section 9.5.1.
- .7 The Owner must obtain the prior approval of the Corporation for any Change Order or Construction Change Directive increasing the Contract Sum, extending the Contract Time, or affecting the fitness of the project for its intended use.
- .8 Any increases in the Contract Sum, as a result of Change Orders, or otherwise, are entirely the responsibility of the Owner and in no way obligate the Corporation to amend the HHAC Agreement or to increase the amount of money available to the Owner under this Agreement.
- .9 The State of New York, Office of Temporary and Disability Assistance, Dormitory Authority of the State of New York, and the New York State Homeless Housing and Assistance Corporation shall be named as an additional insured party on all insurance required under this Contract. The Contractor shall ensure that the project is clearly identified on the insurance certificate in the "Certificate Holder" section by noting the HHAP project number (e.g. 10-01) along with the HHAC address.
- .10 The Corporation may direct the Owner to order the suspension of the Work per Section 14.3. Any increase in the Contract Sum shall be agreed to in writing by the Owner, the Corporation, and the Contractor prior to the suspension of Work. If an agreement cannot be reached, the Owner may opt to terminate the Contract
- .11 The Contractor agrees that the information about the Owner's financial arrangements presented upon the execution of this Contract (including that relating to State funding) and the evidence furnished about such arrangements are satisfactory for the purposes of Section 2.2.1.

§ 1.8 Notwithstanding any provision in this Contract to the contrary, disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, nor to mediation, but must instead be heard in a court of competent jurisdiction of the State of New York.

Article 2 OWNER

Modify **Article 2** as follows:

- § 2.2.2 Modify the entire Section to read: “Permits and fees required for use or occupancy of permanent structures or required for permanent changes in existing facilities, including those required under Section 3.7.1, are the responsibility of the Contractor under the Contract Documents.”
- § 2.2.3 Modify the first sentence of this Section to read: “The Owner shall furnish surveys which may be an existing survey certified to HHAC, describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.”
- § 2.2.5 Delete entire Section.
- § 2.4 Modify this Section by deleting the following sentence: “Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect.”

Article 3 CONTRACTOR

Modify **Article 3** as follows:

- § 3.1.1. Modify this Section by adding the following phrase to the last sentence: “provided said representative is approved in writing by the Owner.”
- § 3.4.1 Modify this Section by deleting the following clause from the first sentence: “Unless otherwise provided in the Contract Documents...”
- § 3.8 **ALLOWANCES** Delete entire Section, including § 3.8.1, § 3.8.2 and § 3.8.3
- § 3.9.1 Modify the first sentence of this Section to read: “The Contractor shall employ a competent superintendent and necessary assistants all of whom shall be subject to the Owner’s and HHAC’s approval who shall be in attendance at the Project site during performance of the Work.”
- § 3.9.3 Modify the first sentence of this Section to read: “The Contractor shall not employ a proposed superintendent to whom the Owner, Architect, HHAC or DASNY has made reasonable and timely objection.”
- § 3.10.1 Modify this Section by adding the following phrase to the end of the first sentence: “including the start and finish of each trade.”
- § 3.16 Modify this Section to read: “The Contractor shall provide the Owner, HHAC, DASNY and Architect access to the Work in preparation and progress wherever located.”
- § 3.18.1 Modify the entire Section to read: “To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.1, the Contractor shall indemnify and hold harmless the Owner, HHAC, Architect,

DASNY, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.1.8."

Article 4 ARCHITECT

Modify **Article 4** as follows:

- § 4.1.3 Modify this Section by deleting the following phrase: "as to whom the Contractor has no reasonable objection and..."
- § 4.2.4 Modify the entire Section to read: "The Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner."
- § 4.2.6 Modify the first sentence of this Section to read: "The Architect, DASNY and the Owner will have authority to reject Work that does not conform to the Contract Documents."
- § 4.2.12 Modify the last sentence of this Section to read: "When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor and will not show partiality to either."

Article 5 SUBCONTRACTORS

Modify **Article 5** by amending the Sections as follows:

- § 5.2.1 Modify by adding this paragraph to the end of this Section: "Names of proposed Subcontractors and suppliers for subcontracts or purchases exceeding \$5,000 shall be furnished to the Owner at least one week prior to execution of the Subcontract. The Owner may request pertinent information concerning subcontractors' ability or qualifications, business relationships, and nondiscrimination and Women/Minority Business status. The Contractor or Subcontractor shall furnish such information in ample time to avoid delay in the Work and prior to execution of the Subcontract. Failure to provide the requested information shall constitute a reasonable objection for the purposes of Article 5.2."
- §5.3 Modify by adding the following sentence to end of this Section: "The retainage held by the Contractor from any Subcontractor shall not exceed 10% of the Subcontractor's payment application."

§ 5.4.2 Delete entire Section.

Article 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

Modify **Article 6** as follows:

§ 6.1.1 Modify the last sentence of this Section to read: “The Contractor may not claim that additional cost is involved because of such action by the Owner.”

§ 6.1.4 Delete entire Section.

Article 7 CHANGES IN WORK

Modify **Article 7** as follows:

§ 7.1.1 Modify by adding the following sentence at end of this Section: “However, the Contract Sum and Contract Time may be changed only by a Change Order or Construction Change Directive.”

§ 7.2.1 Modify Subsection .3 of this Section to read: “The extent of the adjustment, if any, in the Contract Time. No adjustment to the Contract Sum will be allowed solely for adjustment to Contract Time.”

§ 7.3.7 Modify the first sentence of this Section to read: “If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect, with the approval of the Owner and the Corporation, shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.”

§ 7.4 Modify by adding the following sentence to the end of this Section: “Under no circumstances shall a minor change in the Work result in an increase in the Contract Sum or the Contract Time.”

Article 8 TIME

Modify **Article 8** as follows:

§ 8.2.3 Modify by adding the following paragraph to the end of this Section: “The Contractor shall notify the Owner and the Architect in writing within three days of the occurrence of any situation within or beyond the Contractor's control, which may delay the completion of the Work, and shall submit with such notification recommendations for avoiding or minimizing the delay.”

§ 8.3.1 Modify the entire Section to read: “If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by other causes which the Architect, Owner, and the Corporation determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect, Owner, and the Corporation may

determine. The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the Owner or Architect or of a separate contractor employed by the Owner, or by changes ordered in the Work, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work as provided herein.”

§ 8.3.2 Modify the entire Section to read: “Claims relating to an extension of the Contract Time shall be made in accordance with applicable provisions of Article 15.”

§ 8.3.3 Modify the entire Section to read: “This Section 8.3 does not preclude the Owner from seeking recovery of damages for delay under other provisions of the Contract Documents. Failure by the Contractor to diligently prosecute the Work according to the Contract Documents shall constitute grounds for termination under Section 14.2.”

Article 9 PAYMENTS AND COMPLETION

Modify **Article 9** as follows:

§ 9.2 Modify the entire Section to read: “Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, the Owner, or the Corporation shall be used as a basis for reviewing the Contractor’s Applications for Payment. The schedule of values and supporting data shall be submitted to the Owner as soon as possible after the execution of the Contract (but no later than the submission of the Contractor's first Application for Payment) and shall be in a form acceptable to the Owner.”

§ 9.3.1 Modify by adding the following paragraph to the end of the Section: “Waivers of Lien, AIA G705 Contractor's Affidavit of Payment of Debts and Claim, and AIA G706A Contractor's Affidavit of Release of Liens must be submitted with each Application for Payment. The Architect may require such other documents deemed necessary. In addition, a title continuance will be performed when 50%, 80%, and 90% of the Work is complete and a title search at 100% completion and 90 days after.”

§ 9.3.2 Delete entire Section.

§ 9.6.1 Modify the entire Section to read: “After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, subject to the terms of the HHAC Agreement.”

§ 9.7 Delete entire Section.

§ 9.8.1 Modify the entire Section to read: “Substantial completion shall occur when all of the following conditions are satisfied:

- .1 The applicable Government Entity has issued one or more temporary Certificate(s) of Occupancy covering the whole of the Project;

- .2 All utilities specified or required under the Contract Documents are connected and functioning properly;
- .3 Owner can use and/or occupy the Project for the intended use and purpose;
- .4 Contractor and Owner have agreed in writing upon a comprehensive list of items to be completed or corrected prior to the final payment (the "Punch List") or, if they are unable to agree; Architect shall have prepared and issued the Punch List to Contractor;
- .5 All Work, excepting the items on the Punch List and the Close-out Requirements, is complete in all respects in compliance with the Contract Documents;
- .6 Contractor has delivered to Owner a Claims Statement setting forth in detail all Contractor's claims against Owner connected with, or arising out of, this Contract or the Work and arising out of or based on events prior to the date when Contractor gives such statement to Owner;
- .7 Contractor has agreed in writing that Contractor will achieve Final Completion on a specified date (which shall be no later than sixty (60) days after the date of Substantial Completion);
- .8 Contractor has delivered to Owner all required operating manuals and manufacturer's (or Subcontractor's) warranties; and
- .9 Contractor has submitted to Owner written certification that all of the foregoing conditions have been satisfied; or
- .10 Alternatively, Substantial Completion shall occur on any date certified by Owner, who shall have discretion to waive any of the foregoing conditions."

§ 9.8.5 Modify the first sentence of the Section to read: "The Certificate of Substantial Completion shall be submitted to the Owner for approval and to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in such Certificate."

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

conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.”

§ 9.10.3 Modify the first sentence of the Section to read: “Subject to the terms of the HHAC Agreement, if, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect and the HHAC, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.”

§ 9.10.4 Delete entire Section.

Article 10 PROTECTION OF PERSONS AND PROPERTY

Modify **Article 10** as follows:

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

§ 10.3.2 Modify by adding the following paragraph to the end of the Section: “Any removal or abatement of asbestos, PCB, or other harmful substances carried out under this Contract or any Subcontract shall be performed by qualified personnel, properly protected and supervised, in accordance with the Contract Documents and all applicable laws and regulations. If any such removal or abatement is included in the Contract Documents, the Contractor shall include the time required for such removal or abatement including all necessary approvals and inspections, and the requirements of Article 10, in preparing construction schedules.

§ 10.3.3 Modify the first sentence of the Section to read: “To the fullest extent permitted by law, the Owner shall indemnify and hold harmless HHAC, DASNY, Contractor, Subcontractors, Architect, Architect’s consultants and agents and employees of any of them from.....”

Article 11 INSURANCE AND BONDS

Modify **Article 11** as follows:

§ 11.1.1 Modify the first paragraph of the Section to read: “The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor, the Owner, and HHAC from claims set forth below which may arise out of or result from the Contractor’s operations and completed operations under the Contract and for which the Contractor may be liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.”

- § 11.1.2 Modify the second sentence of the Section to read: “Coverages shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. If the Contractor fails to purchase or maintain or require to be purchased and maintained the liability insurance specified by Article 11 of the General Conditions, the Owner may (but shall not be required to) purchase such insurance on the Contractor’s behalf and shall be entitled to be repaid for any premiums paid therefor by the Contractor.”
- § 11.1.3 Modify by adding the following paragraph to end of the Section: "These certificates and the insurance policies required by Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire. This required insurance coverage shall be maintained through the end of the Contractor's guarantee period."
- § 11.1.4 Modify the entire Section to read: “The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, HHAC, DASNY, the Architect and the Architect’s Consultants as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner, HHAC, and DASNY as additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s completed operations.”
- § 11.3.1.1 Modify by adding the following sentence to end of the Section: “This insurance shall include interests of the Owner, HHAC, DASNY the Contractor, Subcontractors and Sub-subcontractors in the Project.”
- § 11.3.1.2 Delete entire Section.
- § 11.3.2 Modify the first line of the Section to read: The Contractor shall purchase and maintain boiler and machinery insurance required...”
- § 11.3.3 Delete entire Section.
- § 11.3.4 Modify the entire Section to read: “If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.”
- § 11.3.5 Delete entire Section.
- § 11.3.6 Modify the first line of the Section to read: “Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy...”
- § 11.3.7 Modify the first sentence of the Section to read: “The Contractor waives all rights against (1) the Owner and any of his subcontractors, sub-contractors, agents and employees, each of the other, and (2) the Architect, Architect’s consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and

employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work.”

§ 11.3.9 Modify the entire Section to read: “If required in writing by a party of interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.”

§ 11.3.10 Modify this entire Section to read: “The Owner as fiduciary shall have power to adjust and settle a loss with the insurers.”

§ 11.4.1 Modify the entire Section to read: “The Owner shall have the right to require the Contractor to furnish bonds and/or a 10% letter of credit covering faithful performance of the Contract and payment of obligations arising thereunder or specifically required in the Contract Documents on the date of execution of the Contract.”

§ 11.4.2 Modify the entire Section to read: “Upon the request of any person or entity appearing to be a potential beneficiary of bonds and/or letter of credit covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds and/or letter of credit or shall authorize a copy to be furnished.

Article 12 UNCOVERING AND CORRECTION OF WORK
Modify **Article 12** as follows:

§ 12.2.1 Modify the first sentence of this Section to read: "The Contractor shall promptly correct Work rejected by the Architect, or Owner, deemed as defective or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed."

§ 12.2.2.1 Modify the first sentence of this Section to read: “In addition to the Contractor’s obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so whether performed by the Contractor, its Subcontractor, Sub-subcontractor, agents, or employees.

Article 13 MISCELLANEOUS PROVISIONS

Modify **Article 13** as follows:

§ **13.1** Modify the entire Section to read: “This Contract shall be governed by the laws of the State of New York.”

§ **13.2.1** Modify the entire Section to read: “The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, the Contractor shall not assign this Contract in whole or in part without the written consent of the Owner. If the Contractor attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ **13.3** Modify the entire Section to read: “Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at, or sent by registered or certified mail, by return receipt requested, or by courier service providing proof of delivery, to the parties at their addresses set forth above. Each party shall immediately notify the other in writing of any change in their address.”

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

Add a new Section **13.5.7** to read as follows:

§ **13.5.7** The Contractor shall cooperate with reasonable requests by the Owner to allow interested parties, invited by the Owner, to visit and observe the Work in progress, provided that such visits do not constitute a safety hazard or interfere with the progress of Work.

§ **13.6** Delete entire Section.

§ **13.7** Modify the entire Section to read: “The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.”

Add a new Section **13.8** to read as follows:

§ **13.8** Notwithstanding any provision of Section 13.7 of the General Conditions to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to

any portion of the Work that is not in accordance with the requirements of the Contract Documents, that would not be visible or apparent upon conducting a reasonable investigation, or that should have been discovered during inspection of the Work, and that is not discovered by the Owner until after the date which, but for this Section 13.8, would be the date of commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by the Owner.

Article 14 TERMINATION OR SUSPENSION OF THE CONTRACT

Modify **Article 14** as follows:

§ 14.1.1.3 Delete entire Section

§ 14.1.1.4 Delete entire Section.

§ 14.1.3 Modify this entire Section to read: “If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may upon seven days’ written notice to the Owner, HHAC, and Architect, terminate the Contract and recover from the Owner payment for all completed Work executed.”

§ 14.2.1 Modify this Section by adding new subsections .5 and .6 and .7 to read:

- .5 If the Contractor is adjudicated a bankrupt or makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Contractors insolvency; or
- .6 the Contractor ceases performance or fails to commence the Work within 10 days after the Notice to Proceed is given; or
- .7 If the Contractor is otherwise is guilty of substantial breach of a provision of the Contract Documents.”

§ 14.2.2 Modify the first sentence of this Section to read: “When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, ten days’ written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:”

§ 14.3.2 Delete entire Section.

Add a new Section **14.4.4** to read as follows:

§ 14.4.4 In the event that the Corporation determines that State funds are unavailable at any time during the duration of the HHAC Agreement, and the HHAC Agreement is terminated, the Owner shall give timely written notice to the Contractor of the termination and terminate this Contract. In the event of such termination the Owner shall be obligated to pay the Contractor only for Work completely executed by the Contractor prior to the time the written notice of the termination was received by the Contractor and costs incurred by reason of such termination.

Article 15 CLAIMS AND DISPUTES

Modify **Article 15** as follows:

- § 15.1.1 Modify by adding the following sentence to end of this Section: “No claims shall be allowed for conditions, which, while not directly visible, are readily inferable based on visible conditions.”
- § 15.1.2 Delete entire Section.
- § 15.1.3 Modify the first sentence of this Section to read: “Pending final resolution of a Claim or as provided in Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.”
- § 15.2.1 Modify by deleting from the third sentence of this Section, the phrase: “as a condition precedent to mediation...”
- § 15.2.5 Modify this Section by deleting the following clause from the end of this Section: “but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.”
- § 15.2.6 Delete entire Section
- § 15.2.6.1 Delete entire Section
- § 15.3 **MEDIATION** Delete entire Section, including: § 15.3.1, § 15.3.2 and § 15.3.3
- §15.4 **ARBITRATION** Delete entire Section, including: §15.4.1, §15.4.1.1, §15.4.2 and §15.4.3
- §15.4.4 **CONSOLIDATION OR JOINDER** Delete entire Section, including: §15.4.4.1, §15.4.4.2 and §15.4.4.3

Article 16 ENTIRETY OF THE AGREEMENT

Modify to add a new **Article 16** to read as follows:

This Agreement, including those documents expressly included by reference by the terms of this Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

Signature

Date

Signature

Date