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**FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS
FOR
ON-CALL ARCHITECTURAL/ENGINEERING SERVICES**

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**FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS
FOR
ON-CALL ARCHITECTURAL/ENGINEERING SERVICES**

Introduction

The Federal Reserve Bank of New York (the “Bank”) requests proposals for On-Call Architectural/Engineering (“AE”) services for selected projects as requested by the Bank (each a “Project” and together “Projects,” as further defined below). This request for proposals (“RFP”) is intended as a summary guide to provide an overview and describe in general terms the requirements of the Architect for all aspects of the Projects. Sections 1, 2, and 3 of this RFP (the “RFP Text”) are not intended to and do not completely detail all of the requirements of the Architect. The Architect shall carefully review the contract attached hereto as Attachment B (“Contract”), which is incorporated into and made a part of this RFP, and the RFP Text to determine all the requirements of the Architect and shall base the proposal submitted to the Bank on the requirements of the Contract and RFP Text. Each Offeror shall submit with their formal proposals, for furnishing AE services to the Bank, a letter stating that both the Contract and the RFP Text have been reviewed and that their proposal is based on the requirements of both of these documents.

The attached Contract includes, but is not limited to, The Standard Form of Agreement between Owner and Architect, AIA Document B141, Fourteenth Edition, 1987, as it has been amended for the Projects by the Contract Rider issued by the Bank (as amended, "AIA B141"). The RFP Text and Contract details the requirements and lists the factors that will be considered in selecting one of the Offerors, specifies contract clauses required by the Bank, and outlines a required response format as Attachment A (the "Proposal Format"). To be responsive, proposals should include all the information specified in the Proposal Format.

All services provided by and work performed by the Architect shall be subject to and comply with all applicable provisions of the Main Building, East Rutherford Operations Center (“EROC”) and 33 Maiden Lane (“33ML”) rules and regulations (Attachment C: House Rules).

The three (3) potential Offerors receiving this RFP are:

- 1.
- 2.
- 3.

1. On-Call Architectural/Engineering Services

1.1 Existing Environment

The subject of the RFP are two (2) Bank-owned buildings: the Main Building is located at 33 Liberty Street, New York, New York and EROC is located at 100 Orchard Street, East Rutherford, New Jersey; and leased space at 33 Maiden Lane, New York, New York. The Main Building was designed by the noted firm of York and Sawyer and was completed in the mid-1920's. At the present time, the Main Building is undergoing renovation on a floor-by-floor basis and rehabilitation of the exterior shell. EROC was designed by HLW International and was completed in 1991. 33 ML was designed by Johnson Burgee Architects and was completed in the late 1980s.

Each year, rapidly changing business requirements necessitate expeditious effecting of special construction projects, independent of the aforementioned capital projects. Examples of such projects include reconfiguration of four (4) floors at 33 ML, installation of turnstiles in the Main Building, emergency installation of a temporary chiller in the Main Building, installation of a gatehouse at the Louise Nevelson Plaza, installation of new partitions in the executive toilet rooms in the Main Building, Bank Supervision Training Center at 33 ML and repairs to the Liberty Street doors.

In issuing this RFP, the Bank seeks to be able to obtain the AE services in connection with such special projects in a manner that will facilitate fast implementation.

1.2 Scope of Services

The successful Offeror shall perform AE services listed the Contract during the term of service, which will be for a period of three (3) years. The AE services will entail delivery of individual Projects on an as-requested basis. The AE services shall include all the required engineering and consulting services including, but not limited to, structural, mechanical, electrical, acoustical and code-compliance. The Bank will have no obligation to employ the successful Offeror for any particular Project.

For each Project for which the Bank desires to utilize the Offeror's services, the Bank will issue a Program and Schedule Notice outlining, in general terms, the scope of the project, the required schedule and any special requirements that may exist.

The AE services required are those enumerated in AIA B141, Standard Form of Agreement between Owner and Architect, 1987 Edition. Within ten (10) business days of the Architect's receipt of the Program and Schedule Notice, the Architect shall provide the Bank with a written response (the "Architect's Response") which comments on the feasibility of the Bank's goals as outlined in the Program and Schedule Notice and describes any specific terms the Architect proposes for the relevant Project, including the professional fees for the Architect and his sub-consultants.

Following the Bank's receipt of the Architect's Response, the Bank and the Architect shall negotiate a mutually agreeable Notice to Proceed which specifies: (i) any agreed-upon modifications to the Program and Schedule Notice, (ii) the Architect's fees, and (iii) any other special requirements for the relevant Project. Upon completion of such negotiations, both the Bank and the Architect shall countersign the Notice to Proceed, whereupon the Offeror shall commence rendering the services outlined in the AIA B141 and the Bank Contract Rider. In the event the Bank determines, in its sole discretion, that the Bank and the Architect will not be able to negotiate a mutually agreeable Notice to Proceed, the Bank may terminate such negotiations and retain another architect for the relevant Project or take any other action the Bank deems appropriate with respect to such Project.

Given the different operating environment of EROC, the Architect shall designate an EROC-specific team.

1.3 Mandatory Requirements

To be considered responsive, a proposal must satisfy the mandatory requirements identified in this section and in other respects be responsive to the requirements of this RFP.

1. The Offeror shall be an architectural or architectural/engineering firm conducting business in the City of New York and the State of New Jersey for no less than ten (10) years with demonstrated experience in both interior and exterior envelope construction.

1.4 Alternative Proposals

Offerors may submit alternative proposals based on differing specifications if:

- (1) all differences from the specifications in this RFP are clearly defined and the alternative proposal adheres to the format specified by this RFP;
- (2) the Offeror submits a base proposal complying with the specifications of this RFP; and
- (3) the alternative proposal is received at the same time that the base proposal is received. The Bank reserves the right not to accept any alternative proposals submitted.

2. Administration of the RFP Process

2.1 Schedule of Events

The following schedule of events shall govern this RFP:

Event	Date
Offerors give written notice to the Bank of intent to respond	
Deadline for receipt of questions	
Proposals due (2:00 p.m.)	
Date of selection of Offeror (approximate)	

The Bank reserves the right, in its sole discretion, to extend the time schedule, as necessary. Offerors will be notified of any change in the schedule.

2.2 Questions about the RFP

It is the Offeror's responsibility to seek clarification of any inconsistencies, ambiguities, errors, or other issues regarding this RFP that the Offeror does not fully understand. The Bank may respond orally to questions that, in the Bank's view, are about insignificant matters that affect only a single Offeror. Responses to questions that may affect Offerors other than the inquirer, however, will be in writing and distributed to all Offerors.

Substantive questions about the RFP should be submitted in writing to:

Joseph Oszacki, R.A., Senior Facilities Engineer
 Federal Reserve Bank of New York
 Real Estate and General Services Function
 33 Liberty Street
 New York, NY 10045
 Telephone: (212) 720-5812
 Facsimile: (212) 720-1510
 E-mail: joseph.oszacki@ny.frb.org

Questions should be submitted by the time specified in the Schedule of Events. No other discussion or communication between an Offeror and an employee or officer of the Bank is permitted and no information gained from any such communication may be considered a binding communication of the Bank.

2.3 Intent to Respond

Each Offeror must submit, by the date specified in Section 2.1 of this RFP, a written statement indicating whether the Offeror intends to submit a proposal responding to this RFP. Submit the statement to the address specified above for submission of questions. The Bank, in its sole discretion, may refuse to consider a proposal submitted by an Offeror who did not submit a timely statement of intent.

2.4 Submission of Proposals

Each Offeror must submit four (4) copies of its proposal sent via certified mail to the address specified in Section 2.2 of this RFP for submission of questions or hand delivered to:

Mr. Richard Prisco, Assistant Vice President
Federal Reserve Bank of New York
Real Estate and General Services Function
33 Liberty Street
New York, NY 10045-0001

to be received no later than 2:00 p.m. on the date specified in Section 2.1 of the RFP.

Proposals received after the exact time for submission will not be considered for award unless the Bank determines that the late receipt was due solely to mishandling by the Bank after receipt at the Bank. The only acceptable evidence of the time of receipt is the time/date stamp of the Bank on the proposal envelope or other documentary evidence of receipt maintained by the Bank.

Each copy of the proposal must be properly executed and any alterations formally explained and initialed by the Offeror. All four (4) copies must be submitted in a sealed envelope within a sealed envelope. The inner envelope must be clearly labeled “Proposal for On-call Architectural/Engineering Services, DO NOT OPEN.” Proposals will not be opened prior to the deadline specified for receipt.

An Offeror, by submitting a proposal, represents that:

- The Offeror has closely examined both the entire Contract and the RFP Text and fully understands both documents;
- The proposal is based upon the requirements described in the Contract and the RFP Text;
- All terms and conditions set forth in the Contract and RFP Text, including all Appendices have been reviewed and understood by the Offeror;
- The Contract, Attachments, Exhibits and Addenda are accepted and incorporated in the proposal unless the proposal explicitly takes exception to them; and

- The Offeror possesses the technical capabilities, equipment, financial resources and personnel to provide AE services

Because the Bank may select a proposal or reject all proposals without further discussions with Offerors, Offerors should present their proposals initially in the most favorable possible terms from both a technical and price viewpoint.

2.5 Amendment or Withdrawal of the RFP

Corrections or clarifications to this RFP will be issued in the form of written Addenda to this RFP and will be sent by certified or registered mail to all Offerors who have indicated an intent to submit a proposal. Receipt of all Addenda should be acknowledged in the proposal. If an Offeror fails to acknowledge receipt of any Addenda, his proposal will nevertheless be construed as though the Addenda had been received and acknowledged. No interpretation, correction, clarification, or amendments to this RFP made by other than written Addenda will be binding on the Bank.

Offerors may modify or withdraw their proposals up to the deadline for submission but not after that time. Proposals may not be withdrawn for One Hundred Fifty (150) days following the deadline for submission.

2.6 Selection of an Offeror

Upon selection of an Offeror, the Bank will notify all Offerors of the selection. The Bank will indicate in general terms the reason why unsuccessful proposals were not accepted.

Selection of an Offeror does not create a contract between the Bank and the selected Offeror. The Bank will negotiate a contract with the successful Offeror, which must include the terms specified in Attachment B to this RFP. An Offeror should specify in its proposal any particular amendments it would propose to the terms stated in Attachment B. **BECAUSE CONTRACT TERMS ARE A PART OF THE EVALUATION PROCESS, THE ONLY CONTRACT CHANGES WHICH THE SUCCESSFUL OFFEROR WILL BE PERMITTED TO PROPOSE AFTER THE AWARD IS MADE ARE THOSE SPECIFICALLY STATED IN DETAIL IN ITS PROPOSAL.** If an agreement acceptable to the Bank is not reached within thirty (30) days of Offeror selection, the Bank reserves the right to disqualify the selected Offeror and re-evaluate the remaining proposals.

Under the contract, the successful Offeror will furnish AE services specified in this RFP.

The final contract is contingent upon approval by the senior management of this Bank and the concurrence of the Board of Governors of the Federal Reserve System. Absent such approval or concurrence, any award or contract may be canceled without liability on the part of the Bank.

2.7 Determination of Responsibility

The Bank will only select an Offeror that is deemed responsible, in the sole discretion of the Bank. The Bank makes its determination of responsibility based on the following factors, judged as of the time of Offeror selection and the date specified for the start of contract performance:

- a. the availability of adequate financial resources to perform the contract;
- b. ability to comply with all required or proposed performance schedules, taking into consideration all existing business commitments;
- c. record of satisfactory performance with any entity of the Federal Reserve System or other entities;
- d. satisfactory record of integrity and business ethics;
- e. necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- f. necessary professional personnel, technical equipment and facilities, professional licenses, and operating authority and insurance coverage or the ability to obtain them; and
- g. other qualifications necessary for eligibility to receive an award under applicable laws and regulations.

Where, in the sole judgment of the Bank, a substantial portion of the contract is to be performed by a subcontractor, the Bank will make a similar determination about the responsibility of the subcontractor. The Offeror, of course, remains responsible for the performance of the subcontractor.

A proposal should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent financial statements, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission. The financial statements provided by the Offeror should be audited. If unaudited financial statements are provided, the Bank may conclude that the Offeror is not responsible, even if the financial statements appear to show financial strength. The Offeror should also include other information that it believes demonstrates that the Offeror is responsible. The burden is upon the Offeror to clearly demonstrate that it is responsible. The Bank reserves the right to require such additional information concerning the Offeror's responsibility as the Bank deems necessary.

Because of the sensitive and confidential information about the Bank's business affairs, operations, and security procedures which Offerors may be given or have access to during the bidding process, the Bank will conduct background investigations, at Offeror expense, on all Offerors and their companies. Such

investigations may include, but may not be limited to, researching a company's history/ownership and fingerprinting and drug testing of Offeror personnel who will have access to the Bank's premises, as more fully described in Attachment C. In the Bank's sole discretion, no award of a contract will be made to, or if an award has already been made, such award may be withdrawn from, any Offeror: (i) that fails to promptly cooperate to the Bank's satisfaction with any background investigations; or (ii) whose background investigation by the Bank produces results that are not, in the Bank's sole determination, satisfactory to the Bank. In the event the Bank fails to make an award to an Offeror or withdraws an award from an Offeror in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Offeror of the specific results of the background check or why the Bank deemed those results unsatisfactory.

2.8 Confidential Information

If the Bank receives a request for information from an Offeror regarding the successful proposal, the Bank may disclose bottom-line amounts of an individual Offeror and other information from a proposal to other Offerors or to members of the public after a proposal has been selected. In deciding on disclosure, the Bank will consider whether the Offeror has requested confidentiality and whether disclosure of the information would likely result in substantial competitive harm to the Offeror. If an Offeror wishes to request confidential treatment of certain information, the request must be in writing and submitted with the proposal or amendment containing the information. The request must discuss in detail the justification for the confidential treatment of each item of information for which confidential treatment is requested. This justification must demonstrate that harm would result from the public release of the commercial or financial information; simply stating that the information would result in competitive harm is not sufficient. The Offeror must also state whether the information is available to the public from another source. Information for which confidential treatment is requested must be:

- a. specifically identified in the nonconfidential portion of the proposal or amendment (by reference to the confidential portion);
- b. separately bound; and
- c. labeled CONFIDENTIAL.

2.9 Reservation of Rights

The issuance of this RFP and the Bank's receipt of any information or proposals shall not, in any manner, obligate the Bank to perform any act or otherwise incur any liabilities. The Bank assumes no obligation to reimburse or otherwise compensate any Offeror or recipient of this RFP for losses or expenses incurred in connection with this RFP. The Bank shall have the right to use, for any purpose, any information submitted in connection with this RFP.

The Bank reserves the right to: (1) withdraw the RFP at any time prior to the execution of a contract; (2) decide not to award a contract to any Offeror; (3) reject a proposal or award the contract without inviting the Offeror to submit a new proposal; (4)

negotiate with any source considered qualified; (5) request, orally or in writing, clarification of or additional information concerning proposals that are considered competitive; (6) waive minor informalities or irregularities, or any requirement of the RFP; (7) accept any proposal in part or in total; (8) select a proposal other than the low cost proposal; and (9) reject a proposal that does not conform to the specified format or the other requirements of this RFP.

Prior to any award, the Bank may require the Offeror to submit or identify in writing price data bearing on the reasonableness of the offer. The Bank reserves the right to have its authorized representatives inspect the facilities and examine any books, documents, papers, records, or other data of the supplier that pertain to and involve transactions relating to the proposal, for the purpose of evaluating the accuracy, completeness, and currency of data supplied.

2.10 Small and Disadvantaged Small Businesses

The Bank has a policy of encouraging acquisitions from small businesses and socially and economically disadvantaged small businesses (a “Covered Company”). The term “small business” means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and regulations thereunder. The term “socially and economically disadvantaged small business” has the same meaning as defined in Section 8(a) of the Small Business Act (15 U.S.C. § 637(a)). Socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. If an Offeror believes that it is a Covered Company, it should submit the reasons for this conclusion with its proposal.

Under the Bank’s policy, the Bank gives preference to a proposal from a Covered Company: a responsive proposal from a responsible Covered Company may be preferred over an otherwise comparable proposal even if the proposal from the Covered Company is marginally more costly. The Bank's contract with the Offeror will also require that the Offeror follow the Bank's policy on Covered Companies in awarding any subcontracts.

2.11 Service Contract Act

Under the Service Contract Act of 1965 (41 U.S.C. § 351 et seq. (the “Act”)) and the regulations promulgated under the Act (29 C.F.R. Part 4) wages and fringe benefits paid to service employees employed by the Offeror in performing the agreement resulting from this RFP must be not less than the minimum wage and not less than those prevailing in the area where services are performed, or, if a collective bargaining agreement covers the service employees, the wages and fringe benefits must be in accordance with the agreement. The Department of Labor determines the level of wages and fringe benefits to be paid to service employees based on the information on Standard Form 98. The selected Offeror will be required to cooperate fully with the Bank by providing any required information and taking any necessary action to obtain a wage

determination or otherwise and will be required to comply with the Act, the Regulations, and any wage determination applicable to the agreement.

3. Evaluation of Proposals

3.1 Objective

The objective of the Bank in soliciting and evaluating proposals for each Project is to ensure selection of a best qualified Offeror who will provide AE services on an on-call basis. The result of the process will be the selection of the proposal that, in the view of the Bank, is most advantageous to the Bank and offers the optimum combination of technical ability/experience, depth of corporation, and price.

3.2 Evaluation Process

Only proposals that are received from Offerors that the Bank has determined to be responsible under Section 2.7 of this RFP will be considered for award.

All proposals of responsible Offerors will be examined to determine responsiveness to the Bank's requirements. To be considered responsive, a proposal must satisfy all the mandatory requirements and otherwise be responsive. A proposal that is not responsive will be set aside. If, after evaluation of the remaining proposals, the Bank determines that none of the proposals are responsive, the proposals set aside, at the Bank's option, may be reexamined.

The remaining proposals will be further evaluated on the basis of the evaluation criteria in Section 3.3 of this RFP, which are listed in descending order of relative importance.

Subsequent to reviewing the proposals and as part of the evaluation, the Bank may interview one or more Offerors. If an interview is requested by the Bank, all proposed team members must be present at the interview. Also subsequent to reviewing the proposals, the Bank may ask one or more Offerors to arrange an inspection tour of their primary place of business and recently completed projects of similar profile.

The Bank has a policy of assisting "Covered Companies" as described in Section 2.10 of this RFP. Under that policy, preference in selecting a proposal may be given to a proposal submitted by a Covered Company. In addition, the subcontracting plan submitted with the proposal will be judged based on plans for using Covered Companies and procedures for documenting compliance with the plan.

3.3 Evaluation Criteria

Responsive proposals will be evaluated on the basis of the following nonexclusive list of criteria. Criteria categories are listed in descending order of relative importance. Where one of the criteria for determining responsibility is repeated here, in this phase of the evaluation, the criterion will be analyzed in terms of the quality with which or the extent to which the criterion is demonstrated.

Technical Ability/Experience

The ability of the Offeror to furnish A/E services that assure high quality construction proven by successfully completed similar projects. Professional background and experience of the members of the proposed project team, taking into account different operating environments of individual sites. Proven track record with the Bank or other Reserve Banks. Availability of information technologies.

Depth of Corporation

The ability of the Offeror to furnish the required services in a timely manner, taking into account existing commitments as indicated by availability, professional diversity and competence of staff. Ability to provide AE services at all Bank sites subject to this RFP.

Cost

Estimated cost to the Bank for AE services based on the hourly billable rates.

Subcontracting Plan

Proposals will be evaluated based on the existence of a plan by the Offeror to use Covered Companies in accordance with the Bank's policy and on the proposed procedures for documenting compliance with the plan as described in Section 3.2 of this RFP.

Contract Terms

Proposals will be evaluated on the basis whether the contract terms or amendments proposed by the Offeror are significantly less advantageous to the Bank than the terms specified in the Contract. Any proposed changes to the Contract must be stated in detail in the Offeror's proposal. **Because proposed contract terms are a part of the evaluation process, the only Contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal.** Acceptance of an Offeror's proposal does not bind the Bank to accept the Contract changes proposed by that Offeror.

3.4 Interviews

Subsequent to the evaluation process, the Bank may choose to interview one or more Offerors.

**FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS
FOR
ON-CALL ARCHITECTURAL/ENGINEERING SERVICES**

Proposal Format

This attachment specifies the format that should be used to prepare proposals responding to this RFP. The sole purpose of this format is to facilitate the fair and equitable evaluation of all proposals received. At its option, the Bank may consider any significant deviation from this format as non-responsive and disqualify that proposal. Extensive cross-referencing to other documents may be considered non-responsive.

The topical format of all proposals should be as follows:

I. Executive Summary

Provide a brief narrative outlining your company's history, professional background of key personnel, and any unique qualifications as pertaining to this Project and any information you may deem helpful to the Bank in its evaluation of your qualifications. Include information on professional background of the sub-consultants

II. Overview

Provide a general overview of your approach to the Bank's goals, as outlined in this RFP.

III. Description of the Architectural/Engineering Services

- Describe, in detail, your company's approach to AE projects similar in scope and nature to the projects listed in the second paragraph of Section 1.1 of this RFP;
- Describe your approach to the different challenges at each site;
- Include resumes of Project Team personnel of the Offeror. There shall be separate teams proposed for the New York sites (Main Building and 33 ML) and EROC. For each person assigned, the Offeror shall include a statement that, to the best of his knowledge, these personnel will be available for the duration of each Project and assign the percent of their time spent on performing work relative to each Project;
- Describe how your company deals with fluctuating internal workloads and demands; and
- Describe your use of information technologies.

The description should demonstrate how the proposal satisfies each of the mandatory requirements listed in Section 1.3 of this RFP and include a statement that the Offeror intends to comply with all other requirements of this RFP.

IV. Experience

Include description of representative projects completed by your firm in the past five (5) years. For each project, indicate which of the key personnel you propose to assign to this Project that was involved with each representative project and describe their responsibilities for every project.

List names, addresses and telephone numbers of individuals the Bank may address questions pertaining to each project submitted as reference.

V. Financial Background and Responsibility

The Offeror should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent audited financial statement, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission.

The Offeror should also include information to demonstrate that the Offeror is “responsible” as described in Section 2.7 of this RFP. This should include examples of similar projects successfully completed, particularly for this Bank or other Reserve Banks.

This information should include similar information about any subcontractor that will perform a substantial part of the contract.

VI. Costs

List hourly billable rates for the key categories:

Project Executive/Partner
 Project Manager
 Project Architect
 Construction Administrator
 Senior Production
 Junior Production

VII. Contract Terms

The Offeror shall specify any contract terms proposed by the Offeror that differ from any terms specified in the Contract. Any proposed changes to the Contract must be stated here in detail. **Because contract terms are a part of the evaluation process, the only Contract changes which the successful Offeror**

will be permitted to propose after the award is made are those specifically stated in detail in its proposal. Acceptance of an Offeror's proposal does not bind the Bank to accept the Contract changes proposed by that Offeror.

VIII. References

The Offeror shall provide the names of at least five (5) customers using the Offeror's AE services in the metropolitan New York area. The references shall include names, addresses, and telephone numbers of appropriate contacts.

IX. Miscellaneous

The Offeror shall include any additional information the Offeror deems useful to the Bank in evaluating the proposal. The Offeror may also request confidential treatment of information in the proposal in accordance with Section 2.8 of this RFP. If the Offeror qualifies as a Covered Company as described in Section 2.10 of this RFP, the Offeror shall indicate that in this section and describe the basis for the determination.

The Offeror shall include its plan for using Covered Companies as subcontractors as discussed in Section 2.10 of this RFP and the procedures the Offeror will use to document compliance with the plan.

X. Execution

The proposal shall be executed by an authorized representative of the Offeror and include evidence of the authority of such a representative.

**FEDERAL RESERVE BANK OF NEW YORK
CONTRACT RIDER**

WHEREAS, the Federal Reserve Bank of New York (“Bank” or “Owner”) desires to retain _____ (the “Architect”) to provide Architectural/Engineering (“AE”) services for selected projects as requested by the Bank (each a “Project” and together “Projects,” as further defined below) for a three (3) year period commencing on _____, 2006 (the “Term”).

WHEREAS, the Bank shall not hereby incur any obligation to utilize the Architect for any particular project and shall remain free at all times during the Term to retain other Architect’s as the Bank may desire.

WHEREAS, for each Project for which the Bank does desire to utilize the Architect’s services, the Bank will issue a Program and Schedule Notice and the Bank and Architect shall negotiate a mutually agreeable Notice to Proceed as described below.

NOW THEREFORE, the Bank and Architect agree that The Standard Form of Agreement Between Owner and Architect (AIA Document B141, Fourteenth Edition, 1987) (the “Agreement”), dated _____ between _____ (the “Architect”) and the Federal Reserve Bank of New York (“Owner”) is amended by this Rider as follows. The entire contract between the parties shall consist of the Agreement, any Addendums, this Rider, Scope and Schedule Notices and Notices to Proceed (the “Contract”). In the event of any inconsistency between the terms of the Agreement and this Rider, the terms of this Rider shall govern.

Article 1. Architect’s Responsibilities

After Section 1.1.3 insert the following:

“The Architect shall provide professional services for each Project subject to this Agreement in accordance with the terms and conditions of this Contract.”

Article 2. Scope of Architect’s Basic Services

Add the following at the end of Section 2.1.1:

“For each Project subject to this Agreement, the Architect shall not proceed from phase to phase as described below until the Owner has approved in writing the work performed by the Architect and the Construction budgets.”

Add the following new sections to Article 2.1:

Architect: _____ Bank: _____

Date: _____ Date: _____

2.1.2. "Main Building" means the Federal Reserve Bank of New York building located at 33 Liberty Street, New York, New York. "EROC" means East Rutherford Operations Center located at 100 Orchard Street, East Rutherford, New Jersey. "33 ML" means the building located at 33 Maiden Lane, New York, New York.

2.1.3. "Project" means the AE services performed in connection with any undertaking described in a Program and Schedule Notice issued by the Bank outlining, in general terms, the scope of the Project, the required schedule and any special requirements that may exist. Within 10 (ten) business days of the Architect's receipt of the Program and Schedule Notice, the Architect shall provide the Bank with a written response (the "Architect's Response") with comments on the feasibility of the Bank's goals outlined in the Program and Schedule Notice and the proposed fee based on a time card basis with a "Not-to-Exceed" amount. Following the Bank's receipt of the Architect's Response, the Bank and the Architect shall negotiate a mutually acceptable Notice to Proceed which specifies: (i) any agreed upon modifications to the Program and Schedule Notice, (ii) a Not-to-Exceed fee for the AE services and (iii) any special requirements for the Project. Upon completion of such negotiations, both the Bank and the Architect shall countersign the Notice to Proceed, whereupon the Architect shall commence rendering the services outlined in The Standard Form of Agreement between Owner and Architect (AIA Document B141, Fourteenth Edition, 1987) and this Rider.

2.1.4 "Owner" or "Bank" means the Federal Reserve Bank of New York, represented by its duly authorized agents.

Add the following after Section 2.2:

2.2.0.1. The Architect shall provide the Owner with a time schedule covering the schematic design phase, design development phase, construction documents phase, bidding or negotiation phase, and the construction phase for each Project including a time allowance for the review by the Board of Governors.

2.2.0.2 The Architect shall conduct a site survey that should include a review and corroboration of the accuracy of available drawings and specifications or other information furnished by the Owner, existing conditions or facilities or to make measured drawings thereof, and interview Owner personnel where applicable.

Architect: _____ Bank: _____

Date: _____ Date: _____

Section 2.5.1. is deleted in its entirety and replaced with the following new sections:

2.5.1. The Architect shall assist the Owner in evaluating proposals for AE services for each Project subject to this Agreement.

2.5.2. For each Project subject to this Agreement, upon Owner approval of construction documents, the Architect shall assist the Construction Manager in solicitation of bids in accordance with the procedures set forth in the AIA Documents and Owner General Terms and Conditions. The Architect shall attend the pre-bid conference and respond to any questions and requests for clarification that the bidders may submit.

2.5.3. For each Project subject to this Agreement, the Architect shall attend the Bid Opening if so requested by the Owner.

2.5.4. For each Project subject to this Agreement, the Architect shall assist the Owner in tabulating and evaluating construction bids. The Architect shall also assist the Owner in the preparation of all contracts for construction.

2.5.5. For each Project subject to this Agreement, the Architect shall review Board of Governors comments and prepare a response thereto.

Section 2.6.1. Delete entirely and substitute with the following:

2.6.1. For each Project subject to this Agreement, the Construction Phase shall commence with the acceptance by the Owner of the Construction Manager’s Guaranteed Maximum Price and, together with the Architect’s obligation to provide the Basic Services under this Agreement, will terminate when final payment to the Contractor is due, or in absence of a final Certificate for Payment or of such due date, sixty (60) days after the Date of Substantial Completion of the Work, whichever occurs first.

Section 2.6.2. Insert after “current as of the date of this Agreement,” the following: “as it may be amended for this Project.”

Section 2.6.3. Add the following:

“Provided, however, the Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase of each Project subject to this Agreement and to supersede the Architect’s Construction Phase responsibility to the extent set forth in written notice to the Architect. The Architect shall no longer bear responsibility unless, until and only to the extent that the Architect shall be redirected to resume responsibility by the Owner. Except with respect to the quasi-judicial authority granted to the Architect herein, the Architect shall not exercise any of its prerogatives or duties in such

Architect: _____ Bank: _____

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manner as to increase cost to the Owner of constructing the Project without Owner’s prior written approval.”

Add the following at the end of Section 2.6.12:

“For each Project subject to this Agreement, the Architect shall forward to the Owner a copy of all such submittals for the Owner’s comments and permanent records.”

Section 2.6.19. Delete entirely and replace with the following:

“For each Project subject to this Agreement, the Architect shall secure the release of liens and closeout of the Project, including determination of the Date of Substantial Completion and final completion, review of the written guarantees and related documents and issuance of the final Certificate for Payment.”

Add the following immediately after Section 2.6.19:

Section 2.6.20. For each Project subject to this Agreement, the Owner shall contract for such services as asbestos abatement design documents and third party air monitoring required by local codes, if needed.

Article 3. Additional Services

Sections 3.4.6. and 3.4.7. Delete entirely.

Article 4. Owner’s Responsibilities

Sections 4.5 through 4.9. Delete entirely.

Section 4.10. Add the following:

“Provided, however, this section shall apply only to such knowledge of fault, defect or nonconformance as may be obtained by the Owner’s representative or his designee and the Owner shall have no obligation to investigate for the purpose of becoming aware of fault or defects.”

Article 6. Use of Architect’s Drawings, Specifications and Other Documents

Section 6.1. Delete the last sentence thereto and add:

“The Owner may also use the Drawings and Specifications with respect to construction, maintenance, repair and modification of each Project subject to this Agreement. At the conclusion of each Project or other termination of this Agreement, the Architect shall promptly return any and all Plans to

Architect: _____ Bank: _____

Date: _____ Date: _____

the Bank, including any Plans that it has shared with, released to, or otherwise provided to any third party.”

Article 7. Arbitration

Section 7.1. Delete entirely and substitute with the following:

“At the exclusive option of the Owner, all claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties agree otherwise. Any and all arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Agreement to the extent necessary to the final resolution of the matter in controversy. The Owner shall include an arbitration and consolidation provision in the Owner-Contractor Agreement and shall provide that similar provisions be included in subcontracts and Purchase Orders. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under the prevailing arbitration law.”

Section 7.3. Delete entirely.

Add the following new section immediately after Section 7.4:

Section 7.5. At the Owner’s exclusive option, the location for settlement of any and all claims, controversies or disputes arising out of or related to this Agreement or any breach thereof whether by arbitration or litigation shall be New York, New York.

Article 8. Termination, Suspension or Abandonment

Section 8.1. Delete “not less than seven days” in line 2.

Section 8.3. Delete the first sentence and substitute with the following:

“This Agreement may be terminated by the Owner without cause immediately upon written notice to the Architect unless otherwise provided in the notice.”

Section 8.7. Delete everything following the word “termination” in line three and place a period following “termination.”

Architect: _____ Bank: _____

Date: _____ Date: _____

Article 9. Miscellaneous Provisions

Delete Section 9.1 entirely and substitute with the following:

“Unless otherwise specified, this Agreement and the rights and obligations under this Agreement shall be governed by and construed in accordance with the Federal law of the United States of America and, in absence of controlling Federal law, in accordance with the law of New York, notwithstanding New York’s choice of law rules.”

Section 9.4. Delete in lines 6 and 7 “the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement” and insert in its place “the Owner-Contractor Agreement to the extent that Agreement is effective.”

Section 9.9. Delete entirely and substitute with the following:

“The Architect shall not refer to the Owner or any part of the Federal Reserve System in any publication or advertisement and shall not publicize its role in each Project subject to this Agreement without the Owner’s prior written consent.”

Article 10. Payments to the Architect

After Section 10.1.1. insert the following section:

10.1.2. For each Project subject to this Agreement, the Architect shall obtain written authorization of the Owner before paying overtime premium to his employees and agents, where such cost is to be charged as additional fee to the Owner.

Section 10.2.1.6. Delete in its entirety and replace with the following: “For each Project subject to this Agreement, computer-aided design and drafting equipment time when used in connection with this project shall be included in the Basic Services and is not a reimbursable expense.”

Section 10.5.1. Delete the phrase “Architect has been found to be liable” and replace it with the phrase “Owner determines, in its sole discretion, that the Architect is responsible for.”

Section 10.6.1. Insert the following at the end thereof:

“and retained for the period of five (5) years from completion of each Project subject to this Agreement.”

Architect: _____ Bank: _____

Date: _____ Date: _____

Section 10.6.1. Add the following:

“Such records shall be subject to Owner audit upon reasonable notification for the purpose of determining the accuracy of statements submitted.”

Article 11. Basis of Compensation

11.5.2. In the first line, delete the phrase “Architect’s invoice” and replace it with “Owner’s receipt of a proper invoice from the Architect.” Delete the second sentence in its entirety.

Article 12. Other Conditions or Services

Add the following:

Section 12.1. INSURANCE: The Architect shall purchase and maintain, as primary Insurance, minimum limits of Insurance as set forth below to protect itself from claims arising out of or resulting from the Architect’s operations under the Contract, whether such operations are undertaken by the Architect any Subcontractors, and/or by any person and/or entity for which any of the foregoing may be liable:

- 1) Claims under workers compensation, disability benefits, and other similar employee benefit acts;
- 2) Claims for damages for bodily injury, occupational sickness or disease, or the death of any employee of the Architect and/or any Subcontractors;
- 3) Claims for damages for of bodily injury, occupational sickness or disease, or the death of any person other than an employee of the Architect or Subcontractor.
- 4) Claims for damages for Personal and Advertising injury which are:
 - (a) Sustained by any person as a result of an occurrence directly or indirectly related to the employment of such person by the Architect and/or,
 - (b) Sustained by any other person.
- 5) Claims for damage to the work, including loss of use, and including the cost to remove, replace, or restore the work, which arise from injury to or destruction of tangible property, or arise from the inadequate installation of, or provision of, or defects in, or defects in design of, the work,

Architect: _____ Bank: _____

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- 6) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and/or
- 7) Claims for damages because of bodily injury or death of any person or because of property damage arising out of any motor vehicle, machinery or equipment.
- 8) Claims for damages, including Rip & Tear and including Loss of Use, which arise out of defects in engineering or architectural design.

Insurance Definitions

“Advertising Injury” – An injury arising from advertising activities, employee publications and all other oral, written, televised, videotaped, electrically transmitted or any otherwise disseminated materials, for: libel, slander, defamation, or disparagement; violation of right of privacy; misappropriation of ideas; infringement of copyright, trademark, title, or slogan; or unfair competition.

“Bodily Injury” – The definition of bodily injury is to include physical injury, sickness, disease, death, mental injury, emotional anguish, shock or humiliation.

“Occurrence” -- An event, or continuous or repeated exposure to conditions, which cause injury during the Policy period. All such exposure to substantially the same general conditions at or emanating from the insured location or insured project shall be deemed one “occurrence.”

“Personal Injury” – Injury sustained as a result of wrongful eviction, false arrest, detention or imprisonment, malicious prosecution, libel, slander or defamation, invasion of privacy, wrongful entry or dismissal, or discrimination.

“Property Damage” – All risk of physical loss of or damage to real and personal property, including the loss of use thereof.

Workers’ Compensation and Employer’s Liability Insurance as required by all applicable local, state and/or Federal laws, and including a Voluntary Employers Liability Rider. All certificates of insurance must specifically note that the statutory provisions of the state or district where the work is located apply. The Employer’s Liability Insurance shall be written for no less than the following limits, or for an unlimited amount if allowable by the appropriate state of jurisdiction:

- (a) Bodily Injury by Accident - \$1,000,000 Each Accident
- (b) Bodily Injury by Disease - \$1,000,000 Policy Limit

Architect: _____ Bank: _____

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(c) Bodily Injury by Disease - \$1,000,000 Each Employee

Comprehensive General Liability Insurance (broad form), written on an “occurrence” basis, including a per-project/per-location amendment to the general aggregate limit. Such policy shall provide cover for Bodily Injury and Property Damage, and for Personal & Advertising injury:

Minimum Limits of Liability:

- (i) Bodily Injury and Property Damage Per Occurrence
Combined Single Limit: \$1,000,000
- (ii) General Aggregate: \$2,000,000
- (iii) Products and Completed Operations Per Occurrence and
Aggregate: \$2,000,000
- (iv) Personal & Advertising Injury: \$1,000,000
- (v) Medical Payments: \$10,000

The Architect’s insurance required under this paragraph shall be written for no less than any limits of liability as herein specified, or as required by law, whichever is greater, by a company or companies licensed to do business in the State of New York, and/or in the district where the work is located. Such companies shall have a minimum “A-” or better policyholder’s rating, and a “Class XI” or better financial rating as listed in the most current edition of the A.M. Best Insurance Guide available on the date of the execution of the Contract.

Comprehensive Automobile Liability insurance, providing coverage for Bodily Injury and Property Damage for claims arising from the operation, use, and/or loading and unloading of any motor vehicle:

- (a) Limit of Liability - \$1,000,000.
- (b) The policy shall contain no exclusion for liability assumed under contract.

Excess or Umbrella Liability Insurance in an amount not less than \$25,000,000 following the forms and amounts of primary General Liability, Automobile, and Workers’ Compensation and Employers Liability Insurance as described herein.

Professional Errors and Omissions coverage with limits no less than \$5,000,000 per occurrence and \$5,000,000 any aggregate, providing coverage for loss or damage resulting from Architect’s professional errors and omissions or wrongful

Architect: _____ Bank: _____

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acts committed in the course of advising on any and all environmental matters; and/or wrongful acts committed in the course of rendering, or failing to render, professional services, such as architectural, engineering, surveying, or other such services, which are undertaken in connection with the Contract. Such insurance coverage will include an endorsement warranting that coverage will apply for claims arising during the course of the contract, and for a period of at least two years thereafter. This two year extended claim and reporting period shall not limit the Architect's liability in the event that a wrongful act is discovered after the two (2) year period, but only limit the strict insurance requirements imposed.

All of the insurance coverage described in this Article maintained by the Architect shall provide that:

- (1) The Owner shall be included in the policy as Additional Insured, as its interest may appear, with the understanding that any obligation imposed upon the insured parties, including, but not limited to, the liability to pay premiums, shall be the sole obligations of the Architect and not the Owner;
- (2) Architect and its Subcontractors expressly waive all rights of subrogation, set-off, and counterclaim against the Owner for damages payable by Insurance obtained pursuant to this Agreement or any insurance coverage's applicable to the work. The policies of insurance required to be carried by Architect and all Subcontractors shall provide such Waivers of Subrogation by endorsement or policy language.
- (3) The Architect's insurance policies shall be endorsed so as to indicate that its policies provide primary and non-contributory coverage for all claims of any type or nature against the Owner, arising out of or resulting from the provision of the work by the Architect and/or any Subcontractors. Any other valid and collectable insurance which includes the Owner as Named Insured shall in no instance be considered as primary, co-insurance, or contributing insurance. (The Architect's policy may allow the Subcontractor's policy to provide primary cover in the event of a claim arising from the Subcontractor's negligence.) These policies shall further be endorsed to allow Cross-Claim and Severability of Interest Endorsements for claims due to the actions and/or inaction of the Architect and/or any Subcontractor.
- (4) All losses shall be payable without restriction on the nature of the work, the occupation of the Architect or use of the work and/or the site, or portion(s) thereof.

Architect: _____ Bank: _____

Date: _____ Date: _____

The Architect shall require each of the Subcontractors to procure and maintain Insurance coverage with Terms and Conditions equal to or exceeding those specified above. Such coverage shall remain in effect until the approved completion of such Subcontractor’s portion of the work, and for an extended period, as specified above, for exposure arising from the completed operations. The Architect shall be solely responsible for ensuring that each such Subcontractor complies with all of the insurance requirements hereunder. The Architect is further charged with monitoring each Subcontractor’s compliance with this provision.

A Certificate of Insurance signed by the insurance carrier or the carrier’s authorized agent stating the limits of the liability and the expiration date of each coverage, and warranting the Architect’s compliance with the above specified provisions shall be delivered to the Owner prior to the commencement of the work. Additionally, such carrier or such authorized agent shall provide a warranty statement that the insurance requirements under this article have been fully met and are covered under such certificate. Should the initial insurance policy expire prior to the final completion of the work, a renewal certificate and additional warranty statement shall be furnished to the Owner not later than thirty (30) days prior to such expiration date. All certificates shall contain a provision that coverage shall not be canceled, materially amended, or allowed to expire without at least sixty (60) days prior written notice to the Owner.

The Architect shall, at all times through final completion of the work, carry and maintain, at the Architect’s sole expense, full replacement cost coverages for damages to or loss of the Architect’s assets, including tools, equipment, material, and facilities required for his provision of the work.

The Owner shall continue to occupy or use a portion or portions of the work prior to Substantial Completion thereof. The Architect shall insure that the insurance company or companies providing the property insurance have consented to this occupancy and use by endorsement to the policy or policies. The insurance shall not be canceled or lapsed on account of such partial occupancy or use.

Compliance by the Architect with the insurance requirements set forth in this article shall not relieve the Architect of any liability arising from any indemnity or other such agreement as set forth in the contract documents, nor shall the Architect’s liability, be limited by the amount of any applicable insurance.

If the General Liability coverages are provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment.

Architect: _____ Bank: _____

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Section 12.1.1. OTHER INSURANCE: The Owner shall not be obligated to procure or maintain any form of fire (property), liability, or other insurance.

Section 12.2. INDEMNITY: The Architect shall indemnify, defend and hold harmless the Owner in accordance with the following provisions:

- (a) from all loss, cost, expense, liability, injury, damage, or death that may occur or be claimed by or in respect of any party or parties or property including the property of the Owner, to the extent, as determined on a percentage-comparative negligence basis, caused by any negligent act or omission made or done in the course of performance of the services required under this Agreement by the Architect, any employee thereof, or any person or entity retained or engaged by the Architect;
- (b) from all cost or expense that the Owner may incur by virtue of any claim by any consultant retained by the Architect for fees or expenses paid to the Architect and not paid to the architect and not paid to the consultant;
- (c) from all loss, cost, expense or liability that the Owner may incur or suffer as a result of any infringement, on the sole part of the Architect or any person or entity retained or engaged by the Architect, of the patent or copyright laws of the United States of any other country for which the Owner is held legally liable; and
- (d) the Architect’s duties under this Section shall in no event exceed the limits of the Architect’s applicable insurance coverage then in force at the time the claim for indemnity is made.

Section 12.3. BUY AMERICAN ACT: The Architect understands that the Owner makes it a policy to comply with the Buy American Act (41 U.S.C. 10(a)-10(d) and Executive Order 10582) as amended. The Architect will use his best efforts to specify materials conforming with this policy.

Section 12.5. EQUAL EMPLOYMENT OPPORTUNITY: In the performance of the Agreement, the Architect agrees that with respect to the work the Architect will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin.

Section 12.5.2. The Architect shall, in all solicitations or advertisements for employees placed by them or on their behalf for this Project, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

Architect: _____ Bank: _____

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Section 12.5.3. Failure of the Architect to comply with the provisions of the "Equal Employment Opportunity" clause may result in a determination that the Architect is in default. In the event of default on the basis of noncompliance with the provisions of this clause, the Owner shall have the right to terminate the contract, as well as any other rights and remedies provided elsewhere in this Agreement in the event of default by the Architect.

Section 12.6. Throughout the course of each Project subject to this Agreement, the Architect shall prepare a written record of conferences and meetings between the Owner and the Architect showing decisions, approvals, and conclusions made on Project work.

Section 12.7. All parties designated by the Architect to maintain liaison with the Owner must be acceptable to the latter and the Architect shall submit the name and professional background of each consultant retained by the Architect to the Owner for approval prior to his participation in each Project subject to this Agreement.

Section 12.8. The Owner expressly reserves the right to engage, hire, or retain any consultant or consultants to assist in the Project and the Architect agrees to cooperate with these consultants.

Section 12.9. NOTICES: All notices, acknowledgments, confirmations, and other communications contemplated herein shall be reduced in writing by the acting party and shall be effective when placed in the United States mail, postage prepaid, addressed as following:

Architect: _____

Owner: Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045
Attention: Richard Prisco, Assistant Vice President

Section 12.10. TAXES: Notwithstanding any provisions to the contrary, the Owner shall not be billed for or obligated to pay any taxes, including local, State or Federal sales, use or gross receipt taxes, from which the Owner, as a Federal Reserve Bank, is exempt pursuant to Section 7 of the Federal Reserve Act (12 U.S.C. § 531).

Architect: _____ Bank: _____

Date: _____ Date: _____

Section 12.11.1. **SMALL BUSINESS AND DISADVANTAGED SMALL BUSINESS:** Owner has a policy of assisting small businesses and disadvantaged small businesses in participating in the performance of its contracts.

Section 12.11.2. The Architect agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this Agreement. The Architect further agrees to furnish to the Owner information demonstrating the Architect’s compliance with this clause, upon request by the Owner.

Section 12.11.3. As used in this Agreement, the term “small business” means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term “disadvantaged small business” means a small business-

- (1) at least fifty-one (51) percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least fifty-one (51) percent of the stock of the business is owned by one or more socially disadvantaged individuals; and
- (2) whose management and daily business operations are controlled by one or more such individuals.

The Architect shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic American, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

Section 12.11.4. The Architect acting in good faith may rely on written representations by subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

Section 12.12. **CONFIDENTIALITY:** Architect acknowledges that any information regarding the Owner, including but not limited to, its operations, business practices, or security procedures obtained by the Architect, its agents or employees while performing the Agreement are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner’s prior written consent.

Architect: _____ Bank: _____

Date: _____ Date: _____

Section 12.13. RIGHT OF ENTRY: Any person or persons designated by Architect but subject to the reasonable approval of the Owner shall have the right to enter the premises of the Owner during the Owner's business hours and upon notice to the Owner or any other reasonable time agreed to by the Owner and subject to the Owner's reasonable security arrangements. A reasonable, security-related denial or restriction of access by Owner either for security reasons shall not constitute a breach of this Contract or affect Owner's rights or Architect's obligations. Owner may conduct security investigations relating to Architect personnel having access to Owner's facilities similar to investigations conducted with respect to Owner's own employees. Owner may require substitution of Architect agents, employees and representatives for reasons relating to Owner security. It is understood that the person(s) designated by Architect to have access to the Owner's premises will be Architect's personnel, unless the Owner is notified and agrees to the contrary. The Architect shall also indemnify the Bank for any penalties assessed against the Bank by the Immigration and Nationalization Service with regard to the knowing hiring of unauthorized workers, as well as any legal fees incurred by the Bank in defense of a related investigation by any branch of the United States Government.

Section 12.14. BACKGROUND INVESTIGATIONS: Because of the sensitive and confidential information about the Bank's business affairs, operation and security procedures which the Architect may be given or have access to during the term of this Contract, the Bank will conduct background investigations of the Architect at the Architect's expense. In the Bank's sole discretion, the Bank may conduct more than one such background investigation during the term of this Contract and such investigations may include, but not be limited to, researching the Architect's ownership, business history and record of ethical conduct. If (i) the Architect fails to promptly cooperate with any such background investigations; or (ii) the Bank determines, in its sole discretion, that the results of any background investigation are not satisfactory to the Bank, the Bank may, at its sole option, terminate this Agreement. immediately and without any liability on behalf of the Bank, other than to pay the Contract of any services that have been properly rendered under this Contract as of the date of termination. In the event the Bank terminates this Contract in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Architect of the specific results of the background check or why the Bank deemed those results unsatisfactory.

Architect: _____ Bank: _____

Date: _____ Date: _____

IN WITNESS WHEREOF, the parties have duly executed this Contract on the dates set forth below:

AGREED:

AGREED:

FEDERAL RESERVE BANK OF NEW YORK

[SIGNATURE]

[SIGNATURE]

[PRINT NAME]

[PRINT NAME]

[TITLE]

[TITLE]

[DATE]

[DATE]

**FEDERAL RESERVE BANK OF NEW YORK
EAST RUTHERFORD OPERATIONS CENTER HOUSE RULES**

The following are rules and regulations that will be strictly enforced for all Architect personnel working at or visiting the Federal Reserve Bank of New York (“Bank”) and the Bank’s East Rutherford Operations Center (“EROC”) located at 100 Orchard Street, East Rutherford, NJ.

General

Work shall conform to Federal, State, and local building codes, including Occupational Safety and Health Administration & Environmental Protection Agency standards.

All meals and coffee breaks will be taken in designated areas only. No food in unauthorized areas.

Smoking or use of any tobacco products is not allowed inside the facility. Smoking in the building will be grounds for dismissal.

NOTIFICATION: The Architect shall inform the Real Estate and General Services (“REGS”) Project staff, EROC Property Management Control Room (4th floor) and Watch Engineer (daily and in person), what personnel will be on-site and what form of work will be performed during the respective shifts that the staff are on-site.

EMERGENCIES: In case of fire, accident, spill, or any other emergency, call REGS (x3294) and/or Protection (x3477).

Chemicals

Material Safety Data Sheet’s must be submitted for the Bank approval prior to any chemical being brought on-site. Only chemicals specific to this Project are allowed on-site. Overnight storage is not permitted.

Flammable liquids must be in an approved safety container, furnished by the Architect personnel, having flash screens and bearing an approval label. No common metal cans or plastic containers are permitted on-site. The safety container shall be labeled indicating its contents.

Flammable chemicals must never be stored in occupied areas of the site. Flammable paints and solvents must be stored in an approved flammable liquid storage cabinet when storage is required inside unoccupied areas on the site. Acids and flammables must never be stored together. If an approved flammable liquid storage cabinet is not available, flammable liquids must be removed from the site when not in use.

Wiping cloths contaminated with combustible and flammable solvents must be placed in an approved waste can (furnished by the Architect) when not in use.

All cans containing cleaning solutions or any other chemical must be kept closed when not in use. Only the can being used is permitted to be open.

Cleanup

The facility demands a stringent cleanup policy. All the Architect staff will be responsible for cleaning, maintaining, and removing debris in the AE areas daily. Special precautions including fine broom cleaning and walk off mats will be required when work is adjacent to occupied space. The Architect staff shall furnish their own containers for disposal. If a dumpster is required, the use and placement shall be coordinated with the Bank. Dumpsters must be removed from the site weekly.

Construction

All tie-ins to existing facilities or equipment, or any other work of this nature (including standby) shall be performed during off hours so as not to interfere or affect the normal operations of the site. Notification is required prior to the execution of the tie-in.

The Architect staff will be responsible for its own scaffolding and staging. On site storage space is limited. The Architect staff shall schedule material delivery by area.

All Bank equipment within the vicinity of construction shall be completely protected from damage. Architect staff is responsible for protecting Bank equipment.

Cutting/Welding/Burning

A Hot Works Permit is required prior to any cutting, welding, soldering, or open flame work performed on the site. Prior to applying for the permit, the Architect staff shall review the EROC Property Management Control Room Operating Guidelines No. 6. This permit can be obtained through the Bank's EROC Property Management representative working on the Project.

Roof Access

A Roof Permit is required prior to any access begin given to any roof structure within the EROC site. Prior to applying for the permit, the Architect personnel shall review the EROC Property Management Control Room Operating Guidelines No. 7. This permit can be obtained through the Bank's EROC Property Management Watch Engineer on duty.

Safety

The Architect's staff is required to use proper safety protective equipment as required by the situation being addressed in the scope of the Project.

All Architect staff shall adhere to any and all Federal, State, and local lockout/tagout standards. In addition to these standards, the Architect staff shall coordinate all lockout/tagout situations with Facilities Division personnel.

All tools, including hand and power tools shall be kept in safe operating condition and shall be used only for their intended purpose.

The use of powder actuated tools is not permitted unless specific approval for each use is obtained from REGS Project staff and EROC Property Management. Powder actuated fastening tools must meet requirement stated in the latest ANSI standard relating to the tool. Powder actuated tools shall not be left unattended and shall be kept under lock and key when not in use.

Lasers are not to be used on the site unless prior approval has been received from REGS Project staff and EROC Property Management representative.

Aisles must be kept clear at all times. Doors, aisles, and/or emergency equipment shall not be blocked at any time. No material shall be stacked in aisles (unless proper aisle widths can be maintained, where aisles are partially marked off).

All temporary and permanent opening in the slab or floor systems shall be identified and secured as required so, as to prevent accidental falling into the opening.

When any work is being done overhead, the area below must be partitioned off from general access, and signs stating "persons working overhead" must be utilized.

No vehicle, material, or tool shall be left unattended anywhere on the site.

Schedule

The start and sequence of the Architect staff work shall be as directed by the Bank's schedule.

It is to be distinctly understood by all the Architect staff that the normal daily operations of the Bank must continue uninterrupted. It shall be fully understood that at no time during any operations shall the Architect staff be in direct contact with the employees of the Bank.

The Architect staff, in carrying out their work, must always employ such personnel, methods, and means of operations which will in no way cause delays, interruption or interference with the work.

Schedules, speed of operations, methods employed, storage of material, prosecution of work, means of protection, and all other matters relating to the Project shall, at all times, be approved by the Bank, and no work shall be started without the Bank's full knowledge and complete approval.

The Architect shall provide twenty-four (24) hour written notice of intention to work in any given area.

Security

The Architect staff shall provide supervision for all work, including subcontractors. Escorts are required for all subcontractors at all times. No employees of the Architect or its subcontractors will be permitted to enter any area of the site without specific authorization. It shall be the Architect's responsibility to see that their employees do not violate this provision.

All Architects must submit their name, company's name, and social security number to the EROC Property Management representative at least three (3) working days in advance of entering the site. All Architects shall submit to fingerprinting (as provided by the Protection Division) and drug testing (as provided by the Medical Department) when identified by the Protection Division. Approval of the Architect staff will be at the discretion of the Bank.

All persons employed on the Project, whether by the Architect or subcontractors, within the site will be required to wear identification badges and comply with the Bank regulations and requirements.

The Bank shall maintain the right to inspect all vehicles, boxes (tool, gang, delivery, etc.), and materials, as necessary to provide protection for the building.

The Bank shall designate locations for trade parking. No street parking will be permitted.

Drawings and Plans

Contract drawings are not intended to represent exact dimensions. Field dimensions are the responsibility of the Architect for all phases of the Project.

It is the responsibility of the Architect to coordinate all work with all existing systems, existing conditions, and work to be performed by other trades.

All work shall be complete and done in a neat and workmanlike manner.

The Architect is responsible for following all appropriate guidelines, specifications, codes, and regulations related to the construction being performed under this contract, including but not limiting to that under the guidance of the Bank, Federal, State, local, and trade organizations.

The above stated requirements are not all inclusive. The Architect staff shall adhere to additional applicable safety instruction and standards which govern the work to be performed. Please contact the Bank's EROC Property Management representative should there be any questions or concerns.

**Federal Reserve Bank of New York
Request for Proposals ("RFP")
for
On-Going Construction Management Services**

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FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS
for
ON-GOING CONSTRUCTION MANAGEMENT SERVICES

Introduction

The Federal Reserve Bank of New York (the "Bank") requests proposals for On-Going Construction Management Services in connection with construction projects ("the Projects") limited in scope. This request for proposals ("RFP") is intended as a summary guide to provide an overview and describe in general terms the requirements of the Construction Manager ("CM") for all aspects of the Projects. Sections 1, 2, and 3 of this RFP (the "RFP Text") are not intended to and do not completely detail all of the requirements of the CM. The CM shall carefully review the contract attached hereto as Attachment B ("Contract"), which is incorporated into and made a part of this RFP, and the RFP Text to determine all the requirements of the CM and shall base the proposal submitted to the Bank on the requirements of the Contract and RFP Text. Each Offeror shall submit with their formal proposals, for furnishing On-Going Construction Management Services to the Bank, a letter stating that both the Contract and the RFP Text have been reviewed and that their proposal is based on the requirements of both of these documents.

The attached Contract includes, but is not limited to, "The Standard Form of Agreement Between the Owner and the Construction Manager where the Construction Manager is also the Constructor," AIA Document A121/CMc and AGC Document 565, 1991 Edition as it has been amended by the Contract Rider generated by the Bank for this Project (as amended, "AIA A121/CMc"). The Contract also includes, for the construction phase of the Projects, the "General Conditions of the Contract for Construction," AIA Document A201, 1987 Edition, as it has been amended for this Project by the Supplementary Conditions generated by the Bank (as amended, "AIA A201"). The RFP Text and Contract details the requirements and lists the factors that will be considered in selecting one of the Offerors, specifies contract clauses required by the Bank, and outlines a required response format as Attachment A (the "Proposal Format"). To be responsive, proposals should include all the information specified in the Proposal Format.

The CM, in addition to acting as an advisor to the Owner during the design period, will assume all financial responsibility for the construction of the Projects. The CM shall also act as the overall Project Coordinator during construction, which will entail coordinating all aspects of the construction, inclusive of any activities required by the Bank and the Bank's vendors and consultants and any other activity required by any party for the successful and timely completion of the Projects. The CM shall also plan and coordinate any of the logistical aspects of the Projects with the Bank, and any other entity required for the successful completion of the Projects. These aspects may include, but are not limited to, planning of deliveries, unloading of materials and equipment, demolition, communications and submissions to the Owner and any authorities having jurisdiction, access to 33 Liberty Street, New York, New York ("Main Building"), 33 Maiden Lane, New York, New York ("33 Maiden Lane"), and 100 Orchard Street, East

Rutherford, New Jersey (“EROC”), and interfacing with all the parties required for completion of the Projects.

All services provided by and work performed by the CM shall be subject to and comply with all applicable provisions of the Main Building, 33 Maiden Lane, and EROC rules and regulations, whether or not such provisions are included in Exhibit F of the Contract.

The four potential providers receiving this RFP are:

- Bovis Lend Lease
- Turner Construction Corporation
- Plaza Construction
- Structure Tone, Inc.

1. On-Going Construction Management Services

1.1 Existing Environment

The subject of the RFP is two Bank-owned buildings, the Main Building and EROC, and space leased by the Bank at 33 Maiden Lane. The Main Building was designed by the noted firm of York and Sawyer and was completed in the mid-1920's, with an addition at the east end completed in 1936. EROC was completed in the early 1990's. 33 Maiden Lane is a Class A office building constructed in the mid-1980's. At the present time, the Main Building is undergoing renovation on a floor-by-floor basis, in addition to an exterior shell renovation.

Each year, rapidly changing business requirements necessitate expeditious effecting of construction, independent of the aforementioned capital projects. Recent examples of such projects, executed under an existing on-going construction management agreement, include a pistol range renovation, cleaning of the 1st floor ducts, and entrance overhaul at the Main Building, reconfiguration of 4 floors at 33 Maiden Lane, and installation of a security post adjacent to the Main Building at Louise Nevelson Plaza. The Offerors are advised that it is the Bank's policy to perform all disruptive work outside regular business hours.

1.2 Scope of Services

The successful Offeror shall perform the Pre-Construction and Construction Phases services listed in AIA Document A121/CMc, Standard Form of Agreement between the Owner and Construction Manager where the Construction Manager is also the Constructor, 1991 Edition, the Federal Reserve Bank of New York Contract Rider, AIA Document 201, General Conditions of the Contract for Construction, 1987 Edition and the Supplementary Conditions thereto during the Term of Services (3 years). The services will entail delivery of individual Projects on an as-requested basis. The Bank will have no obligation to employ the successful Offeror for any particular Project.

For each Project for which the Bank desires to utilize the Offeror's services, the Bank will issue a Program and Schedule Notice outlining, in general terms, the scope of the project, the required schedule and any special requirements that may exist. The Bank will also identify the design consultants involved in the Project.

Within five (5) business days of the CM's receipt of the Program and Schedule Notice, the CM shall provide the Bank with a written response (the "CM's Response") which comments on the feasibility of the Bank's goal's as outlined in the Program and Schedule Notice and describes any specific terms the CM proposes for the relevant Project, including the CM's fees for Pre-Construction phase services on a time card basis with a Not-to-Exceed amount.

Following the Bank's receipt of the CM's Response, the Bank and the CM shall negotiate a mutually agreeable Notice to Proceed which specifies: (i) any agreed-upon modifications to the Program and Schedule Notice, (ii) the CM's fees for Pre-Construction phase services for the relevant Project, and (iii) any other special requirements for the relevant Project. Upon completion of such negotiations, both the Bank and the CM shall countersign the Notice to Proceed, whereupon the Offeror shall commence rendering the services outlined in the AIA Document A121/CMc, Standard Form of Agreement between the Owner and Construction Manager where the Construction Manager is also the Constructor, 1991 Edition, the Federal Reserve Bank of New York Contract Rider, AIA Document 201, General Conditions of the Contract for Construction, 1987 Edition and the Supplementary Conditions thereto. In the event the Bank determines, in its sole discretion, that the Bank and the CM will not be able to negotiate a mutually agreeable Notice to Proceed, the Bank may terminate such negotiations and retain another construction manager for the relevant Project or take any other action the Bank deems appropriate with respect to such Project.

1.3 Mandatory Requirements

To be considered responsive, a proposal must satisfy the mandatory requirements identified in this section and in other respects be responsive to the requirements of this RFP.

1. The Offeror shall be a construction firm conducting business in the City of New York for no less than ten (10) years with demonstrated experience in both interior and exterior envelope construction.

1.4 Alternative Proposals

Offerors may submit alternative proposals based on differing specifications if:

- (1) all differences from the specifications in this RFP are clearly defined and the alternative proposal adheres to the format specified by this RFP;
- (2) the Offeror submits a base proposal complying with the specifications of this RFP; and

(3) the alternative proposal is received at the same time that the base proposal is received. The Bank reserves the right not to accept any alternative proposals submitted.

2. Administration of the RFP Process

2.1 Schedule of Events

The following schedule of events shall govern this RFP:

Event	Date
Offerors give written notice to the Bank of intent to respond	
Deadline for receipt of questions	
Proposals due (2:00 p.m.)	
Date of selection of vendor (approximate)	

The Bank reserves the right, in its sole discretion, to extend the time schedule, as necessary. Offerors will be notified of any change in the schedule.

2.2 Questions about the RFP

It is the Offeror's responsibility to seek clarification of any inconsistencies, ambiguities, errors, or other issues regarding this RFP that the Offeror does not fully understand. The Bank may respond orally to questions that, in the Bank's view, are about insignificant matters that affect only a single Offeror. Responses to questions that may affect Offerors other than the inquirer, however, will be in writing and distributed to all Offerors.

Substantive questions about the RFP should be submitted in writing to:

Joseph Oszacki, R.A., Senior Facilities Engineer
 Federal Reserve Bank of New York
 Real Estate and General Services Function
 33 Liberty Street
 New York, NY 10045
 Telephone: (212) 720-5812
 Facsimile: (212) 720-1510
 E-mail: joseph.oszacki@ny.frb.org

Questions should be submitted by the time specified in the Schedule of Events. No other discussion or communication between an Offeror and an employee or officer of the Bank is permitted and no information gained from any such communication may be considered a binding communication of the Bank.

2.3 Intent to Respond

Each Offeror must submit, by the date specified in the Schedule of Events, a written statement indicating whether the Offeror intends to submit a proposal responding to this RFP. Submit the statement to the address specified above for submission of questions. The Bank, in its sole discretion, may refuse to consider a proposal submitted by an Offeror who did not submit a timely statement of intent.

2.4 Submission of Proposals

Each Offeror must submit four (4) copies of its proposal sent via certified mail to the address specified above for submission of questions or hand delivered to:

Mr. Richard Prisco
Real Estate and General Services Officer
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045-0001

to be received no later than 2:00 p.m. on the date specified in the Schedule of Events.

Proposals received after the exact time for submission will not be considered for award unless the Bank determines that the late receipt was due solely to mishandling by the Bank after receipt at the Bank. The only acceptable evidence of the time of receipt is the time/date stamp of the Bank on the proposal envelope or other documentary evidence of receipt maintained by the Bank.

Each copy of the proposal must be properly executed and any alterations formally explained and initialed by the Offeror. All four (4) copies must be submitted in a sealed envelope within a sealed envelope. The inner envelope must be clearly labeled "Proposal for Construction Management Services, DO NOT OPEN." Proposals will not be opened prior to the deadline specified for receipt.

An Offeror, by submitting a proposal, represents that:

- The Offeror has closely examined both the entire Contract and the RFP Text and fully understands both documents;
- The proposal is based upon the requirements described in the Contract and the RFP Text;
- All terms and conditions set forth in the Contract and RFP Text, including all Appendices have been reviewed and understood by the Offeror;
- The Contract, Attachments, Exhibits and Addenda are accepted and incorporated in the proposal unless the proposal explicitly takes exception to them; and

- The Offeror possesses the technical capabilities, equipment, financial resources and personnel to provide Construction Management Services provided by the Offeror.

Because the Bank may select a proposal or reject all proposals without further discussions with Offerors, Offerors should present their proposals initially in the most favorable possible terms from both a technical and price viewpoint.

2.5 Amendment or Withdrawal of the RFP

Corrections or clarifications to the RFP will be issued in the form of written Addenda to the RFP and will be sent by certified or registered mail to all Offerors who have indicated an intent to submit a proposal. Receipt of all Addenda should be acknowledged in the proposal. If an Offeror fails to acknowledge receipt of any Addenda, his proposal will nevertheless be construed as though the Addenda had been received and acknowledged. No interpretation, correction, clarification, or amendments to the RFP made by other than written Addenda will be binding on the Bank.

Offerors may modify or withdraw their proposals up to the deadline for submission but not after that time. Proposals may not be withdrawn for One Hundred Fifty (150) days following the deadline for submission.

2.6 Selection of a Vendor

Upon selection of a vendor, the Bank will notify all Offerors of the selection. The Bank will indicate in general terms the reason why unsuccessful proposals were not accepted.

Selection of a vendor does not create a contract between the Bank and the selected Offeror. The Bank will negotiate a contract with the successful Offeror, which must include the terms specified in Attachment B to this RFP. An Offeror should specify in its proposal any particular amendments it would propose to the terms stated in Attachment B. **BECAUSE CONTRACT TERMS ARE A PART OF THE EVALUATION PROCESS, THE ONLY CONTRACT CHANGES WHICH THE SUCCESSFUL OFFEROR WILL BE PERMITTED TO PROPOSE AFTER THE AWARD IS MADE ARE THOSE SPECIFICALLY STATED IN DETAIL IN ITS PROPOSAL.** If an agreement acceptable to the Bank is not reached within thirty (30) days of vendor selection, the Bank reserves the right to disqualify the selected Offeror and re-evaluate the remaining proposals.

Under the contract, the successful Offeror will furnish Construction Management Services specified in the RFP.

The final contract is contingent upon approval by the senior management of this Bank and the concurrence of the Board of Governors of the Federal Reserve System. Absent such approval or concurrence, any award or contract may be canceled without liability on the part of the Bank.

2.7 Determination of Responsibility

The Bank will only select a contractor that is deemed responsible, in the sole discretion of the Bank. The Bank makes its determination of responsibility based on the following factors, judged as of the time of vendor selection and the date specified for the start of contract performance:

- a. the availability of adequate financial resources to perform the contract;
- b. ability to comply with all required or proposed performance schedules, taking into consideration all existing business commitments;
- c. record of satisfactory performance with any entity of the Federal Reserve System or other entities;
- d. satisfactory record of integrity and business ethics;
- e. necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- f. necessary professional personnel, technical equipment and facilities, professional licenses, and operating authority and insurance coverage or the ability to obtain them; and
- g. other qualifications necessary for eligibility to receive an award under applicable laws and regulations.

Where, in the sole judgment of the Bank, a substantial portion of the contract is to be performed by a subcontractor, the Bank will make a similar determination about the responsibility of the subcontractor. The Offeror, of course, remains responsible for the performance of the subcontractor.

A proposal should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent financial statements, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission. The financial statements provided by the Offeror should be audited. If unaudited financial statements are provided, the Bank may conclude that the Offeror is not responsible, even if the financial statements appear to show financial strength. The Offeror should also include other information that it believes demonstrates that the Offeror is responsible. The burden is upon the Offeror to clearly demonstrate that it is responsible. The Bank reserves the right to require such additional information concerning the Offeror's responsibility as the Bank deems necessary.

Because of the sensitive and confidential information about the Bank's business affairs, operations, and security procedures which Offerors may be given or have access to during the bidding process, the Bank will conduct background investigations, at Offeror expense, on all Offerors and their companies. Such investigations may include, but may not be limited to, researching a company's

history/ownership and fingerprinting and drug testing of bidder personnel who will have access to the Bank's premises. In the Bank's sole discretion, no award of a contract will be made to, or if an award has already been made, such award may be withdrawn from, any Offeror (i) that fails to promptly cooperate to the Bank's satisfaction with any background investigations, or (ii) whose background investigation by the Bank produces results that are not, in the Bank's sole determination, satisfactory to the Bank. In the event the Bank fails to make an award to an Offeror or withdraws an award from an Offeror in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Offeror of the specific results of the background check or why the Bank deemed those results unsatisfactory.

2.8 Confidential Information

If the Bank receives a request for information from an Offeror regarding the successful proposal, the Bank may disclose bottom-line amounts of an individual Offeror and other information from a proposal to other Offerors or to members of the public after a proposal has been selected. In deciding on disclosure, the Bank will consider whether the Offeror has requested confidentiality and whether disclosure of the information would likely result in substantial competitive harm to the Offeror. If an Offeror wishes to request confidential treatment of certain information, the request must be in writing and submitted with the proposal or amendment containing the information. The request must discuss in detail the justification for the confidential treatment of each item of information for which confidential treatment is requested. This justification must demonstrate that harm would result from the public release of the commercial or financial information; simply stating that the information would result in competitive harm is not sufficient. The Offeror must also state whether the information is available to the public from another source. Information for which confidential treatment is requested must be:

- a. specifically identified in the nonconfidential portion of the proposal or amendment (by reference to the confidential portion);
- b. separately bound; and
- c. labeled CONFIDENTIAL.

2.9 Reservation of Rights

The issuance of this RFP and the Bank's receipt of any information or proposals shall not, in any manner, obligate the Bank to perform any act or otherwise incur any liabilities. The Bank assumes no obligation to reimburse or otherwise compensate any Offeror or recipient of this RFP for losses or expenses incurred in connection with this RFP. The Bank shall have the right to use, for any purpose, any information submitted in connection with this RFP.

The Bank reserves the right: (1) to withdraw the RFP at any time prior to the execution of a contract; (2) to decide not to award a contract to any Offeror; (3) to reject a proposal or award the contract without inviting the Offeror to submit a new proposal; (4) to negotiate with any source considered qualified; (5) to request, orally or in writing, clarification of or additional information concerning proposals that are

considered competitive; (6) to waive minor informalities or irregularities, or any requirement of the RFP; (7) to accept any proposal in part or in total; (8) to select a proposal other than the low cost proposal; and (9) to reject a proposal that does not conform to the specified format or the other requirements of this RFP.

Prior to any award, the Bank may require the Offeror to submit or identify in writing price data bearing on the reasonableness of the offer. The Bank reserves the right to have its authorized representatives inspect the facilities and examine any books, documents, papers, records, or other data of the supplier that pertain to and involve transactions relating to the proposal, for the purpose of evaluating the accuracy, completeness, and currency of data supplied.

2.10 Small and Disadvantaged Small Businesses

The Bank has a policy of encouraging acquisitions from small businesses and socially and economically disadvantaged small businesses (a "Covered Company"). The term "small business" means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and regulations thereunder. The term "socially and economically disadvantaged small business" has the same meaning as defined in Section 8(a) of the Small Business Act (15 U.S.C. § 637(a)). Socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. If an Offeror believes that it is a Covered Company, it should submit the reasons for this conclusion with its proposal.

Under the Bank's policy, the Bank gives preference to a proposal from a Covered Company: a responsive proposal from a responsible Covered Company may be preferred over an otherwise comparable proposal even if the proposal from the Covered Company is marginally more costly. The Bank's contract with the contractor will also require that the contractor follow the Bank's policy on Covered Companies in awarding any subcontracts.

2.11 Service Contract Act

Under the Service Contract Act of 1965 (41 U.S.C. § 351 *et seq.* (the "Act")) and the regulations promulgated under the Act (29 C.F.R. Part 4) wages and fringe benefits paid to service employees employed by the contractor in performing the agreement resulting from this RFP must be not less than the minimum wage and not less than those prevailing in the area where services are performed, or, if a collective bargaining agreement covers the service employees, the wages and fringe benefits must be in accordance with the agreement. The Department of Labor determines the level of wages and fringe benefits to be paid to service employees based on the information on Standard Form 98. The selected contractor will be required to cooperate fully with the Bank by providing any required information and taking any necessary action to obtain a wage determination or otherwise and will be required to comply with the Act, the Regulations, and any wage determination applicable to the agreement.

3. Evaluation of Proposals

3.1 Objective

The objective of the Bank in soliciting and evaluating proposals for each Project is to ensure selection of a best qualified Offeror who will provide Construction Management Services on an on-going basis. The result of the process will be the selection of the proposal that, in the view of the Bank, is most advantageous to the Bank and offers the optimum combination of technical ability/experience, depth of corporation, and price.

3.2 Evaluation Process

Only proposals that are received from Offerors that the Bank has determined to be responsible under Section 2.7 of this document will be considered for award.

All proposals of responsible Offerors will be examined to determine responsiveness to the Bank's requirements. To be considered responsive, a proposal must satisfy all the mandatory requirements and otherwise be responsive. A proposal that is not responsive will be set aside. If, after evaluation of the remaining proposals, the Bank determines that none of the proposals are responsive, the proposals set aside, at the Bank's option, may be reexamined.

The remaining proposals will be further evaluated on the basis of the evaluation criteria in Section 3.3, which are listed in descending order of relative importance.

Subsequent to reviewing the proposals and as part of the evaluation, the Bank may interview one or more Offerors. If an interview is requested by the Bank, all proposed team members must be present at the interview. Also subsequent to reviewing the proposals, the Bank may ask one or more Offerors to arrange an inspection tour of their primary place of business and recently completed projects of similar profile.

The Bank has a policy of assisting "Covered Companies" as described in Section 2.10 of this RFP. Under that policy, preference in selecting a proposal may be given to a proposal submitted by a Covered Company. In addition, the subcontracting plan submitted with the proposal will be judged based on plans for using Covered Companies and procedures for documenting compliance with the plan.

3.3 Evaluation Criteria

Responsive proposals will be evaluated on the basis of the following nonexclusive list of criteria. Criteria categories are listed in descending order of relative importance. Where one of the criteria for determining responsibility is repeated here, in this phase of the evaluation, the criterion will be analyzed in terms of the quality with which or the extent to which the criterion is demonstrated.

Technical Ability/Experience

The ability of the Offeror to furnish Construction Management Services that assure high quality construction proven by successfully completed similar projects. Professional background and experience of the members of the proposed project team. Proven track record with the Bank or other Reserve Banks.

Depth of Corporation

The ability of the Offeror to furnish the required services in a timely manner, taking into account existing commitments as indicated by availability, professional diversity and competence of staff.

Project Management Approach

The Offeror's approach to as-requested construction manager services (please refer to Section III of the Proposal Format), including, but not limited to, staffing.

Cost

Cost to the Bank of On-Going Construction Services.

Subcontracting Plan

Proposals will be evaluated based on the existence of a plan by the Offeror to use Covered Companies in accordance with the Bank's policy and on the proposed procedures for documenting compliance with the plan as described in Section 3.2 of the RFP.

Contract Terms

Proposals will be evaluated on the basis whether the contract terms or amendments proposed by the Offeror are significantly less advantageous to the Bank than the terms specified in the Contract. Any proposed changes to the Contract must be stated in detail in the Offeror's proposal. **Because proposed contract terms are a part of the evaluation process, the only Contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal.** Acceptance of an Offeror's proposal does not bind the Bank to accept the Contract changes proposed by that Offeror.

**Federal Reserve Bank of New York
Request for Proposals
for
On-Going Construction Management Services**

Proposal Format

This attachment specifies the format that should be used to prepare proposals responding to this RFP. The sole purpose of this format is to facilitate the fair and equitable evaluation of all proposals received. At its option, the Bank may consider any significant deviation from this format as non-responsive and disqualify that proposal. Extensive cross-referencing to other documents may be considered non-responsive.

The topical format of all proposals should be as follows:

I. Executive Summary

Provide a brief narrative outlining your firm's history, professional background of key personnel, professional background of key consultants and any unique qualifications as pertaining to this Project and any information you may deem helpful to the Bank in its evaluation of your qualifications.

II. Overview

Provide a general overview of your approach to the Bank's goals, as outlined in this RFP.

III. Description of On-Going Construction Management Services

- Describe, in detail, your firm's approach to construction projects similar in scope and nature to the projects listed in the second paragraph of Section 1.1 of this RFP.
- Include resumes of Project Team personnel of the Offeror. For each person assigned, the Offeror shall include a statement that, to the best of his knowledge, these personnel will be available for the duration of each Project and assign the percent of their time spent on performing work relative to each Project.
- Describe how your firm deals with fluctuating internal workloads and demands.

The description should demonstrate how the proposal satisfies each of the mandatory requirements listed in Section 1.3 of the RFP and include a statement that the Offeror intends to comply with all other requirements of the RFP.

IV. Experience

Include description of representative projects completed by your firm in the past five (5) years. For each project, indicate which of key personnel you propose to assign to this project was involved with each representative project. Describe their responsibilities for every project.

List names, addresses and telephone numbers of individuals the Bank may address questions pertaining to each project submitted as reference.

V. Financial Background and Responsibility

The Offeror should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent audited financial statement, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission.

The Offeror should also include information to demonstrate that the Offeror is "responsible" as described in Section 2.7 of the RFP. This should include examples of similar projects successfully completed, particularly for this Bank or other Reserve Banks.

This information should include similar information about any subcontractor that will perform a substantial part of the contract.

VI. Costs

For every project, the Offeror will be compensated on a percentage of the Cost of the Work basis. The Offeror shall propose his fee as follows:

Pre-Construction Phase: list the Hourly Billable Rates for personnel proposed for each Project. Identify the Direct Personnel Expense and Overhead and Profit multipliers. Include Hourly Billable Rates for work on premium time.

Construction Phase: Construction Manager's General Conditions, Fee and Insurance based on Percentages of the Cost of the Work, as defined in Article 5 of Attachment B.

The Offerors are advised that Bank is exempt from all the local and state taxes.

VII. Contract Terms

The Offeror shall specify any contract terms proposed by the Offeror that differ from any terms specified in the Contract. Any proposed changes to the Contract must be stated here in detail. **Because contract terms are a part of the evaluation process, the only Contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically**

stated in detail in its proposal. Acceptance of an Offeror's proposal does not bind the Bank to accept the Contract changes proposed by that Offeror.

VIII. References

The Offeror shall provide the names of at least five (5) customers using the Offeror's Construction Management Services (preferably in the metropolitan New York area). The references shall include names, addresses, and telephone numbers of appropriate contacts.

IX. Miscellaneous

The Offeror shall include any additional information the Offeror deems useful to the Bank in evaluating the proposal. The Offeror may also request confidential treatment of information in the proposal in accordance with Section 2.8 of the RFP. If the Offeror qualifies as a Covered Company as described in Section 2.10 of the RFP, the Offeror shall indicate that in this Section and describe the basis for the determination.

The Offeror shall include its plan for using Covered Companies as subcontractors as discussed in Section 2.10 of the RFP and the procedures the Offeror will use to document compliance with the plan.

X. Execution

The proposal shall be executed by an authorized representative of the Offeror and include evidence of the authority of such a representative.

FEDERAL RESERVE BANK OF NEW YORK

CONTRACT RIDER

WHEREAS, the Federal Reserve Bank of New York (“Bank” or “Owner”) desires to retain _____ (the “Construction Manager” or “CM”) to provide construction management services for selected projects as requested by the Bank (each a “Project” and together “Projects,” as further defined below) for a three year period commencing on _____, 2005 (the “Term”).

WHEREAS, the Bank shall not hereby incur any obligation to utilize the Construction Manager for any particular project and shall remain free at all times during the Term to retain other construction managers or construction contractors as the Bank may desire.

WHEREAS, for each Project for which the Bank does desire to utilize the Construction Manager’s services, the Bank will issue a Program and Schedule Notice and the Bank and the Construction Manger shall negotiate a mutually agreeable Notice to Proceed as described below.

NOW THEREFORE, the Bank and the Construction Manager agree that The Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, AIA Document A121/CMc and Document 565, 1991 Edition, dated _____ between _____ (the “Construction Manager” or “CM”) and the Federal Reserve Bank of New York (“Owner” or “Bank”) is amended by this Rider as follows (as amended the “Agreement” or “AIA A121”). The entire contract between the parties shall consist of the Agreement, the AIA Document A201 Fourteenth Edition, 1987 as it may be amended by the Supplementary Conditions (“AIA A201” or “Exhibit A”) issued by the Bank for the purpose of this Agreement, any Addendums, Program and Schedule Notices, Notices to Proceed, and the Contract Documents (as such term is defined in Subparagraph 1.01 below) (together, the “Contract”). In the event of any inconsistency between the terms of AIA A121 and this Rider, the terms of this Rider shall govern. To the extent that any provisions of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of each Project and the Owner shall prevail.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

ARTICLE 1; GENERAL PROVISIONS

Add the following new Paragraph 1.0:

1.0 DEFINITIONS

Terms used throughout this Contract shall have their meaning set forth in Exhibit A (the Supplementary Conditions to AIA A201) unless otherwise defined herein or a different definition is clearly intended from the context. To the extent that the terms of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of each Project and the Owner shall prevail.

Add the following Subparagraphs:

1.0.1 Contract Documents The "Contract Documents" means the Contract, together with all Modifications thereto, the Construction Documents and Specifications and the Exhibits to this Contract listed in this Subparagraph 1.0.1 which are attached or deemed to be incorporated in this Contract as they are developed. The Contract Documents constitute the entire agreement between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents do not include any bidding documents, such as, any advertisements or invitations to bid, any instructions to bidders, any requests for proposals, any sample forms, any contractor or subcontractor bids or portions or addenda relating to these or any other documents, unless otherwise specifically enumerated in this Contract. For the Construction Phase of each Project subject to this Agreement, the General Conditions of the Contract shall be AIA Document A201, Fourteenth Edition, 1987, as amended for this project by the Bank's Supplementary Conditions, which is hereinafter referred to in its modified form as "AIA A201" or "Exhibit A" and includes but is not limited to, the portions of this AIA A121 that pertains to the Construction Phase of the work and the "General Conditions of the Contract for Construction" and the following Exhibits:

- Exhibit A AIA A201, 1987 Edition and Supplementary Conditions thereto";
- Exhibit B Key Members of Construction Manager's Staff;
- Exhibit C Program and Schedule Notice (for each Project subject to this Agreement);
- Exhibit D Notice to Proceed (for each Project subject to this Agreement);
- Exhibit E Drawings and Specifications (for each Project subject to this Agreement); and
- Exhibit F Section 531 of Title 12 of the U.S. Code re: Tax Exempt Status of Owner.

1.0.2 Architect The "Architect" shall have the meaning that is defined in Article 4 of the AIA A201.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

1.0.3 Work For each Project subject to this Agreement, the Bank will issue a Program and Schedule Notice outlining, in general terms, the scope of the project, the required schedule and any special requirements that may exist. The Bank will also identify the design consultants involved in the Project.

Within five (5) business days of the Construction Manager’s receipt of the Program and Schedule Notice, the Construction Manager shall provide the Bank with a written response (the “CM’s Response”) which comments on the feasibility of the Bank’s goal’s as outlined in the Program and Schedule Notice and describes any specific terms the Construction Manager proposes for the relevant Project, including the Construction Manager’s fees for Pre-Construction phase services on a time card basis with a Not-to-Exceed amount.

Following the Bank’s receipt of the CM’s Response, the Bank and the Construction Manager shall negotiate a mutually agreeable Notice to Proceed which specifies (i) any agreed-upon modifications to the Program and Schedule Notice, (ii) the Construction Manager’s fees for Pre-Construction phase services for the relevant Project, and (iii) any other special requirements for the relevant project. Upon completion of such negotiations, both the Bank and the Construction Manager shall countersign the Notice to Proceed, whereupon the Construction Manager shall commence rendering the services outlined in the AIA Document A121/CMc, Standard Form of Agreement between the Owner and Construction Manager where the Construction Manager is also the Constructor, 1991 Edition, the Federal Reserve Bank of New York Contract Rider, AIA Document 201, General Conditions of the Contract for Construction, 1987 Edition and the Supplementary Conditions thereto. In the event the Bank determines, in its sole discretion, that the Bank and the Construction Manager will not be able to negotiate a mutually agreeable Notice to Proceed, the Bank may terminate such negotiations and retain another construction manger for the relevant Project or take any other action the Bank deems appropriate with respect to such Project.

The “Work” shall have the meaning that is defined in Article 1.1.3 of the AIA A201 and shall include in general, but is not limited to, the following: any construction and services required to achieve the goals enumerated in the Program and Schedule Notice, the Notice to Proceed and the Contract Documents. The Work shall include all supervisory personnel; labor; materials; tools; supplies; equipment; additional services; scaffolding; transportation; licenses; etc., as well as any other methods of construction necessary for each Project completion required of the Construction Manager by the Contract Documents, even items or services which are not specifically stated in the Contract Documents but which are generally required under standard construction practices for this type of office environment or which can be reasonably inferred for a construction project of this nature; such items shall be assumed to be included in the scope of the Work. The Work shall also encompass any task or service that is required for the Construction Manager to turn over to the Owner a complete project including all required signoffs and inspections required under any applicable law, regulation or building code.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

The Work does not include Pre-Construction Services performed by the Construction Manager.

1.0.4 Project Each "Project" shall mean the overall undertaking in which the Architect, Owner, Construction Manager and others will participate to complete the necessary building modifications and construction required to achieve the goals stated in the Program and Schedule Notice, the Notice to Proceed and the Contract Documents. Each Project shall include services required under this Contract (all phases), including the performance and completion of the Work, as well as the services required by the Architect and any other consultants or contractors the Owner may engage to assist in the completion of the Work and any tasks associated with each Project.

1.0.5 "Main Building" means the Federal Reserve Bank of New York building located at 33 Liberty Street, New York, New York.

1.0.6 "EROC" means the Federal Reserve Bank of New York, East Rutherford Operations Center building located at 100 Orchard Street, East Rutherford, New Jersey.

1.0.7 "33 Maiden Lane" means the Federal Reserve Bank of New York leased facility located at 33 Maiden Lane, New York, New York.

1.1 RELATIONSHIP OF PARTIES

Delete the word "reasonable" after the word "Manager's" in line 4 and replace it with the word "best."

Insert after the second sentence the following:

"Such services shall consist of all construction management and general contracting services and work required for projects of this size and complexity, and the services shall be performed to the highest professional standards followed by construction management and general contracting firms generally recognized as leaders of the construction industry."

1.2 GENERAL CONDITIONS

Insert after the word "Construction" in line 3, the following: "as it may be amended for each Project subject to this Agreement."

Insert after the word "Agreement" in line 8, the following: "as it may be amended for each Project subject to this Agreement."

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Insert at the end of Paragraph 1.2 the following:

“Wherever the AIA Document A121/CMc and AGC Document 565, 1991 Edition, as it may be amended for each Project, or any portion of the Agreement make reference to AIA Document A201, it shall mean the “General Conditions of the Contract for Construction,” AIA Document A201 Fourteenth Edition, 1987, as it may be amended for each Project by the Supplementary Conditions generated by the Bank (“AIA A201” or “Exhibit A”).”

ARTICLE 2; CONSTRUCTION MANAGER'S RESPONSIBILITIES

Delete the third sentence of the first paragraph and replace it with the following:

“The Pre-Construction Phase may also include any Minor Work (see Subparagraph 2.3.1.1) that may be required prior to the start of the Construction Phase. The Owner may, in its sole discretion, establish the pace and degree of overlapping, if any, of the Pre-Construction Phase and the Construction Phase and may require time intervals between the phases which shall not be considered a delay of each Project by the Owner. The Construction Manager shall begin to render such services on the date specified in the Notice to Proceed. All of the services described in this Article 2 shall collectively constitute the “Construction Manager’s Services.” The Construction Manager shall provide the Construction Manager's Services expeditiously, with due diligence, in accordance with the time periods agreed to with the Owner at the time this Contract is executed.”

2.1.1 PRELIMINARY EVALUATION

Delete Subparagraph 2.1.1 in its entirety and replace with the following:

“For each Project, within Fourteen (14) calendar days of the date of the Notice to Proceed, the Construction Manager shall provide a complete evaluation of the Owner’s program and provide a detailed cost estimate, in terms of one another, based on all the information available to that date. When this initial estimate has been reviewed by the Bank, a Project budget shall be established, as per Section 3.1.3. Throughout the duration of each Project, the Construction Manager shall advise the Owner and Architect promptly if it appears that the Project budget will not be met, provide estimates of overage and make recommendations for corrective action.”

2.1.2 CONSULTATION

Insert the following after the second sentence:

"This consultation should include details with respect to all systems relevant to each Project, including, without limitation, rigging, structural, plumbing, security and

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

communications, fire protection and life safety plans, heating, cooling, ventilation, and electrical.”

Add the following new Subparagraphs:

2.1.2.1 LOGISTICS

For each Project subject to this Agreement, the Construction Manager shall become familiar with the operating procedures of the Owner and any conditions, rules and regulations of the Real Estate and General Services Function of the Bank, physical restriction or any activity or part thereof on or about the Main Building, EROC and/or 33 Maiden Lane that may impose restrictions on the Construction Manager or the Bank with respect to the cost or timely completion of each Project. The Construction Manager shall meet with the Bank and the Architect as required to discuss and address these issues to the mutual satisfaction of the Bank. The Construction Manager shall prepare a written report which identifies these and any other logistical, legal or procedural issues that may impact the cost or time of completion of each Project. The Construction Manager shall generate a constructability review for each Project in terms of these issues. The Construction Manager’s review shall include in a detailed fashion, but not be limited to, topics such as deliveries and vertical hoisting of materials and equipment for both the Owner and Construction Manager and other logistical concerns. The Construction Manager shall develop, compare and contrast various options for the cost and schedule and evaluate the implications of each of these options on each Project.

2.1.2.2 VALUE ENGINEERING

For each Project subject to this Agreement, the Construction Manager shall review the “Design Development Documents” and the "Construction Documents" as they are being prepared by the Architect, and make recommendations to the Owner and Architect with respect to the items listed below. The Construction Manager shall meet with the Owner and Architect at a minimum of weekly intervals, to discuss and present recommendations on the documentation and marked-up drawing(s) prepared by the Construction Manager with respect to the following:

- (a) the construction feasibility with regard to all aspects of the Work;
- (b) the availability of labor, materials and supplies and actions designed to minimize adverse effects of labor or material shortages;
- (c) design options, installation, detailing and construction alternates and how these relate to construction costs including estimates of material and design options, preliminary budgets and possible construction economies consistent with the Owner's requirements and sound construction practices; and

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

- (d) omissions, discrepancies and deficiencies, in the Construction Documents, or between the Construction Documents and existing conditions at the Main Building, EROC and/or 33 Maiden Lane with respect to the installation and construction completion. Minor omissions and uncoordinated, reasonably inferred items shall not be reason for change orders or project delays.

2.1.2.3 ERRORS, OMISSIONS & TRADE CONSIDERATIONS

For each Project subject to this Agreement, Construction Manager shall review the "Design Development Documents" and the "Construction Documents" as they are being prepared by the Architect, and make recommendations to the Owner and Architect with respect to the items listed below. The Construction Manager shall meet with the Owner and Architect at a minimum of weekly intervals, to discuss recommendations and present documentation prepared by the Construction Manager with respect to the following:

- (a) conduct of construction operations under good construction practices; and any variations from customary construction, practices and methods which, in the Construction Manager's opinion, may cause difficulties or occasional delays in the performance of the Work; and
- (b) elimination of possible conflicts and/or overlapping jurisdictions among the various trades or overlapping responsibilities among Subcontractors.

2.1.2.4 LABOR AND MATERIAL SURVEY

For each Project, the Construction Manager, within fourteen (14) calendar days of the signing of the Notice to Proceed, shall make a labor and material survey, including an analysis of the costs, types and quality of labor required for the Work and a forecast of the availability thereof as and when needed, including a survey and schedule of the dates of all union labor contracts coming up for renewal during the projected period of construction. Such survey shall also include the Construction Manager's recommendations and plan regarding the development and administration of an effective labor relations program for the Work and the avoidance of labor disputes during the performance of the Work. The Construction Manager shall review the "Design Development Documents" and the "Construction Documents" as they are being prepared by the Architect, and make recommendations on unit prices and alternates for each component of the construction. The Construction Manager shall incorporate these recommendations into the bid packages as required by the Owner.

2.1.2.5 COMMUNICATION REQUIREMENTS

The Construction Manager shall maintain written records and computerized records, in a fashion acceptable to the Owner, of all communications with the Architect and the Owner

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

and make the same available for inspection by the Owner at all times. Upon request, the Construction Manager shall promptly furnish to the Owner copies of all correspondence between the Construction Manager and Architect relative to each Project. The Construction Manager agrees to perform other services and attend such meetings during the Pre-Construction Phase as the Owner may request in order to assist in the preparation of the Construction Documents, cost estimates, updated Project Schedules and any other documents and instruments relative to the Work and each Project. The Construction Manager shall prepare and promptly distribute minutes of all such meetings to all attendees, the Owner, Architect and such other parties as may reasonably be designated by the Owner to receive such minutes.

2.1.3 PRELIMINARY PROJECT SCHEDULE

Delete the first sentence in its entirety replace with the following:

“For each Project, the Construction Manager shall develop and submit within fourteen (14) business days of the Notice to Proceed, for review and approval by the Owner and Architect, the "Preliminary Project Schedule" that shall include all aspects of each Project. This Schedule shall include all tasks required for the performance of the Work and any aspects of each Project outside the Construction Manager’s scope of work. This schedule shall be fully coordinated and integrated with the timing requirements as set forth by the Owner in this Contract. The Preliminary Project Schedule shall include in a detailed fashion, but not be limited to, the following aspects of each Project:

- (a) a time schedule which identifies all major, minor and critical and non-critical components of the Work and each Project, including all milestone and interim dates for pre-purchasing materials (including long lead time items);
- (b) the dates for commencement, Date of Substantial Completion and Date of Final Completion;
- (c) the dates for receiving, reviewing and negotiating bids and/or proposals and awarding Subcontracts;
- (d) dates for shutdowns and tie-ins of building systems; and
- (e) dates for the start-up and testing of each portion of the Project.

The Construction Manager must obtain the Owner’s and Architect’s approval for any portion of the Preliminary Project Schedule relating to activities required by the Owner or services performed by the Owner’s own forces, or contractors or consultants.”

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Insert new subparagraph 2.1.3.1.

2.1.3.1 PROJECT SCHEDULE APPROVAL

For each Project subject to this Agreement, the Architect shall review the detailed Project Schedule and the Owner will notify the Construction Manager in writing when the Preliminary Project Schedule has been accepted and approved by the Owner as the "Project Schedule." This approval will be at the sole discretion of the Owner, and will take affect at the time the notification is sent to the Construction Manager. The Owner may approve the Preliminary Project Schedule as the Project Schedule at that time or at any time one of the following milestones is reached: eight (8) weeks after the date of the Notice to Proceed; at the time the Owner requests the Construction Manager to provide a Guaranteed Maximum Price; or at the time the Construction Manager is required to submit a Guaranteed Maximum Price to the Owner. The Construction Manager agrees that the Project Schedule shall not be amended, modified or extended without the Owner's prior written approval and shall meet the critical dates as stated in the Program and Schedule Notice and/or the notice to Proceed.

2.1.5 PRELIMINARY COST ESTIMATES

Rename this Section, "**COST ESTIMATES**"

Subparagraph 2.1.5.1: Delete in its entirety and replace with the following:

"For each Project subject to this Agreement, the Construction Manager shall prepare and submit, for review and approval by the Owner and Architect, a detailed estimate of the cost of the Project, including supporting data. The finished and detailed estimate shall be submitted to the Owner within fourteen (14) calendar days of the Notice to Proceed. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate bi-weekly or as required by the Owner and Architect. The Construction Manager shall also submit finished, detailed and complete estimates to the Owner when the Design Development Documents and Construction Documents are 60% and 100% completed. The Construction Manager shall advise the Owner and Architect promptly if it appears that any estimate will exceed any previously approved cost estimate or the Project Budget and shall promptly provide a detailed estimate of overages and make appropriate recommendation(s) for corrective action that will enable adherence to the Project Budget."

Delete Subparagraphs 2.1.5.2, 2.1.5.3, and 2.1.5.4 in their entirety.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

2.1.6 SUBCONTRACTORS AND SUPPLIERS

Delete in its entirety and replace with the following:

“Unless otherwise directed by the Owner, for each Project subject to this Agreement, the Construction Manager shall enter into Subcontracts with vendors who are to furnish materials and equipment, persons or entities performing Work or other work necessary for the completion of each Project. The Owner shall direct the Construction Manager whether to enter into Subcontracts in the Pre-Construction Phase or the Construction Phase. Materials and equipment shall be purchased in a manner that assures use of the Owner's tax exemption (see Section 11.14). The Construction Manager shall solicit and enter into Subcontracts as follows:

- .1 Within fourteen (14) days of the signing of the Notice to Proceed, the Construction Manager shall propose pre-qualification criteria for all Subcontractors and shall propose specific pre-qualification criteria for any specialty subcontractors that may be required. The Construction Manager shall include in the pre-qualification criteria any special Owner requirements. The Construction Manager shall meet with the Owner and Architect to finalize the pre-qualification criteria and shall prepare and submit to the Owner and Architect for their approval the pre-qualification criteria for each Subcontractor. The Owner shall have sole discretion as to the pre-qualification criteria used to determine the qualified bidders list for each trade.
- .2 The Construction Manager shall develop interest in each Project among potential Subcontractors.
- .3 The Construction Manager, based on the Owner and Architect approved pre-qualification criteria, shall identify potential service providers within each of those trades necessary for the Work, perform evaluations of their financial strength, current work loads, areas of qualification, capability of their staff, strength of their home office support, quality of work on similar projects, management and financial control systems, and references. The Construction Manager shall furnish these evaluations to the Owner and the Architect for review and submit a qualified bidders list by trade or type of construction activity for the Architect's and Owner's approval. The bidders' list shall be accepted and agreed to by the Construction Manager, Owner and Architect prior to the submission of a proposed Guaranteed Maximum Price by the Construction Manager.
- .4 The Construction Manager shall advise the Owner and Architect as to the appropriate limits of the scope of work for the trades to be used in each Project, based on careful research of qualified Subcontractors.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

- .5 The Construction Manager shall prepare bid packages using the Design Documents, Construction Documents, Technical Specifications and any overall pertinent information prepared by the Architect, Owner, Owner's vendors and/or consultants and prepare separate bid packages for the Subcontracts, including providing written descriptions of the scope of work for a particular trade, model contracts, bidding instructions, and requests for unit prices, bonding and insurance requirements, reference requirements, and response dates. These bid packages shall be reviewed and approved by the Owner and the Architect.
- .6 The Construction Manager shall distribute the bid packages to the Owner-approved bidders' and solicit lump sum bids, including man-hour estimates, alternates to the Work, unit pricing, and labor and material rates for the scope of work within each bid.
- .7 The Owner, at its sole discretion, shall have the option to require the Construction Manager to adhere to the Owner's procurement guidelines. At a minimum, the Construction Manager shall adhere to the following subcontractor bidding procedures: (i) bidding will be by sealed bid sent from the subcontractor to the Owner; (ii) bids will be opened by the Owner in the presence of the Construction Manager and Architect; and (iii) bids will be submitted to the Architect for review. If requested by the Owner, the Construction Manager shall clarify or shall obtain clarifications of unclear or missing information, and obtain corrected bids as necessary.
- .8 The Construction Manager shall certify and submit in writing to the Owner and Architect that all bids are on a common basis as to information contained in the bid packages, are in the proper format, are consistent with the requirements of the Construction Documents, provide a reasonable expectation for a fair profit for the bidder and include all relevant elements of the Contract.
- .9 The Construction Manager shall tabulate all the certified bids according to the scope of work, compare the bids to the Project budget, and shall submit to the Owner a re-recommendation for award with a statement of reasons for the recommendation and the bid tabulations. The selection of the successful bidder(s) shall be the responsibility of the Construction Manager, however the Owner will have the option to require the Construction Manager to select another bidder as the successful bidder. If the Owner requires the Construction Manager to select a bid other than the low bid and the Guaranteed Maximum Price has previously been

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

established, an adjustment of the Guaranteed Maximum Price will be made for the difference between the cost of the successful bid and the low bidder, and adjustment of contract time or schedule will not be allowed.

- .10 After the successful bidders have been selected, the Construction Manager shall negotiate with the selected Subcontractors on the terms and conditions under which each will contract with the Construction Manager ("Subcontracts"). The Owner reserves the right to require that the Subcontracts comply with the Owner’s procurement guidelines. During re-award meetings, the Construction Manager shall ensure that each Subcontractor has a thorough understanding of the scope of work and advise him of the manning and progress reporting information requirements and general site safety, housekeeping and other requirements for each Project.
- .11 The Construction Manager shall issue notices to proceed as appropriate and as required in the Project Schedule.”

2.1.7 LONG-LEAD TIME ITEMS

Delete this section in its entirety and replace with the following:

“For each Project subject to this Agreement, the Construction Manager shall review the “Design Development Documents" and the "Construction Documents" as they are being prepared by the Architect and shall identify all materials or equipment that may require a lead time for delivery of over six (6) weeks from the time of order (“Long-Lead Time Items”). The Construction Manager shall recommend the most effective way of acquiring these items. The Construction Manager shall determine and submit to the Owner a report outlining the cost and schedule implications associated with long-lead time procurement of Long-Lead Time Items. If required by the Owner, the Construction Manager shall develop long-lead time procurement packages including budget, schedule, bid, award and engineering. The Construction Manager shall also be responsible for the deliveries of any Long-Lead Time Items purchases. These early purchase packages shall be executed, based on the sole discretion of the Owner.”

2.1.8 EXTENT OF RESPONSIBILITY

Delete this section in its entirety.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Rename this Section, "EQUAL EMPLOYMENT OPPORTUNITY"

Delete in its entirety and replace with the following:

“In performance of this Contract, the Construction Manager agrees that with respect to each Project the Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.”

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

Replace the title of Subparagraph 2.2 with the following, “GUARANTEED MAXIMUM PRICE PROPOSAL, CONTRACT TIME AND OPTIONS TO CONTRACT METHODOLOGY”

Delete Subparagraph 2.2.1 in its entirety and replace with the following:

“For each Project subject to this Agreement, within fourteen (14) calendar days of a request by the Owner, which shall be no earlier than delivery to the Construction Manager of Construction Documents for each phase of the Work that are at least seventy-five percent (75%) complete as determined by the Architect, the Construction Manager agrees to propose a Guaranteed Maximum Price. The Owner may request the Construction Manager to revise the Guaranteed Maximum Price for each phase of the Work based on revisions to the Contract Documents, as often as deemed necessary at bi-weekly intervals. The Construction Manager shall certify in writing to the Owner that the Guaranteed Maximum Price is the amount for which the Construction Manager shall guarantee the performance and completion of the Work and all required Construction Manager Services, inclusive of, but not limited to, all of the Cost of the Work, the Construction Manager’s Fee, Construction Manager’s General Conditions and Construction Manager’s Contingency.”

2.2.2 Insert after the word “as” in line 8, the word: “significant.”

Insert at the end of Paragraph 2.2.3 the following:

“For each Project subject to this Agreement, the Construction Manager's Contingency shall not exceed the percentage of the total value of the Cost of the Work as set forth in Article 5, based on when the Guaranteed Maximum Price was established.”

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Add the following new Subparagraph “2.2.3.1 Establishment of Guaranteed Maximum Price”

2.2.3.1 For each Project subject to this Agreement, after receipt of the Construction Manager's certification of the Guaranteed Maximum Price, the Owner may accept or reject such certification and thus the Guaranteed Maximum Price, by written notice to the Construction Manager. If the Owner fails to accept the Construction Manager's certification, and thus the Guaranteed Maximum Price, within thirty (30) days after receipt thereof, the certification shall be deemed rejected.

2.2.3.1.1 Acceptance of Guaranteed Maximum Price

- (i) If the Owner accepts the Guaranteed Maximum Price, the Compensation is based on the Subcontract Costs, established through competitive bidding, plus the agreed upon percentage for General Conditions and the agreed upon percentage or Construction Manager's Fee and Contingency as outlined in the Contract. If the final Cost of the Work plus the Cost for the Construction Manager's Services is less than the Guaranteed Maximum Price as adjusted for Changes in the Work, one hundred percent (100%) of any such savings shall inure to the Owner's benefit and Owner will have no obligation to pay such amount to the Construction Manager. If the final Cost of the Work plus the Cost for the Construction Manager's Services exceeds the adjusted Guaranteed Maximum Price, any such additional cost shall be borne by the Construction Manager and Owner will have no obligation to pay such amount to the Construction Manager.
- (ii) Lump Sum Option: For each Project subject to this Agreement, after the Owner has accepted the Guaranteed Maximum Price, the Owner, at its sole discretion, may convert the Guaranteed Maximum Price to a Lump Sum Amount at which time the method of compensation to the Construction Manager shall be a Lump Sum. If the Owner opts to convert to this lump sum method, the Construction Manager shall provide, inclusive of but not limited to, any and all services required by the Construction Manager, any and all required construction including all subcontracts, all Construction Phase and Post Construction Phase Services, and any other services required to complete the Work as stated in this Agreement, the Contract and the Construction Documents for this Lump Sum Amount. The “Lump Sum Amount” shall be of equal value, in current dollars, to the Guaranteed Maximum Price that was certified by the Construction Manager and accepted by the Owner, less the Construction Manager's Contingency. Alternatively, the Owner may propose to the Construction Manager a lower Lump Sum Amount which, if acceptable to the Construction Manager, shall become the Lump Sum Amount. The Owner may choose to convert to a lump sum contract any time after acceptance of the Guaranteed Maximum Price until fourteen (14) days after a time when all subcontracts for each trade has been awarded. If the Owner opts to convert the method of payment to a Lump Sum Amount the method for compensation and progress payments for all the Work and Services

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

provided by the Construction Manager and any subcontractor shall be based on AIA A201.

2.2.3.1.2 Rejection of Guaranteed Maximum Price

For each Project subject to this Agreement, if the Guaranteed Maximum Price is not accepted, the Owner, at its sole discretion, shall have the following options for determination of a Guaranteed Maximum Price acceptable to the Owner and/or otherwise compensating the Construction Manager for completing or terminating his Work:

- (1) The Owner may continue to retain the Construction Manager under the terms of this Contract and request another Guaranteed Maximum Price at a later time; or
- (2) The Owner may meet with the Construction Manager and attempt to negotiate a mutually acceptable Guaranteed Maximum Price. If the parties agree on a Guaranteed Maximum Price, the Construction Manager shall formally submit that price for the Owner's acceptance within three (3) business days from the date of the agreement; or
- (3) The Owner may require the Construction Manager to administer the preconstruction phase of the Contract, including the competitive bidding, and complete the construction of the Work for which the Construction Manager will be compensated for the Cost of the Work, which includes the General Conditions, less the Construction Manager's Contingency, plus the Construction Manager's Fee; or
- (4) The Owner may terminate this Contract, pay to the Construction Manager any Cost of Construction Manager's Services for services rendered prior to the time, assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions of the Construction Manager's Services to another Construction Manager acceptable to the Owner.

2.2.4.4 Insert after the word "contingency" in line 3, the words: "General Conditions,"

2.2.5 Delete the word "promptly" in line 5.

Delete Subparagraph 2.2.6 in its entirety and replace with the following:

"For each Project subject to this Agreement, within thirty (30) days after receipt of the Construction Manager's certification of the Guaranteed Maximum Price, the Owner may accept or reject the certification and the Guaranteed Maximum Price by written notice to the Construction Manager. If the Owner fails to accept the Construction Manager's certification and the Guaranteed Maximum Price within thirty (30) days after receipt

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

thereof, the certification and the Guaranteed Maximum Price shall be deemed rejected. If the Owner agrees to accept such certification, the Guaranteed Maximum Price shall become effective on the date the Construction Manager receives the Owner's written notice of acceptance."

Delete Subparagraph 2.2.10 in its entirety and replace with the following:

"Due to the Owner's tax exempt status, the Guaranteed Maximum Price shall not include any taxes."

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

Delete Subparagraph 2.3.1.1 in its entirety and replace with the following:

"For each Project subject to this Agreement, the "Construction Phase" shall commence on the date specified in a notice from the Owner to the Construction Manager"

Add the following new Subparagraphs:

2.3.1.2 DELAYS

For each Project subject to this Agreement, the Construction Manager shall be responsible for any costs, delays or other damages sustained by the Construction Manager or Owner resulting from the Construction Manager's failure to provide complete consulting services during the Preconstruction Phase of each Project, specified in Section 2.1 and 2.2, of AIA A121. Specifically, and without limiting the foregoing, it is the responsibility of the Construction Manager to maintain the Project Schedule. The Construction Manager shall notify the Architect and Owner promptly in writing if the Construction Manager anticipates that it will not be able to comply with the Project Schedule. If the Construction Manager so notifies the Architect and Owner, and if, in the opinion of the Owner as reasonably exercised, the Construction Manager falls behind in the Project Schedule for any reason other than a delay for which the Construction Manager has received an extension of time by the Owner, the Construction Manager shall take whatever steps may be necessary to improve the progress of the Work and shall, if requested by the Owner, submit operational plans to demonstrate the manner in which the lost time may be regained. If the Owner determines, in its sole discretion, that the Construction Manager or any of its Subcontractors is responsible for a delay in the progress of the Work, the Construction Manager shall increase, in connection with the performance of the Site-Related General Conditions, and shall cause the Subcontractors to increase, in connection with their performance of their respective portions of the Work pursuant to Subcontracts, the number of workers, the number of shifts, the days of work and, to the extent permitted by law, institute overtime operations, all at no additional

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

increase to the Guaranteed Maximum Price or cost to the Owner, in order to regain any time lost and maintain the Project Schedule. Failure of the Construction Manager to comply with the provisions of this subparagraph 2.3.1.2 shall lead to the determination that the Construction Manager is not prosecuting the Work with such diligence as will assure completion within the approved Project Schedule. Upon such determination, the Owner may, without thereby waiving any other right or remedy hereunder, at law or in equity, terminate, in accordance with the applicable provisions of this Contract, the Construction Manager's right to proceed with the performance of this Contract.

2.3.1.3 FINAL COMPLETION

Final Completion of the Work The Work, including any Change Orders, shall be deemed "finally complete" on the date upon which all of the following conditions are met: (a) the Architect has certified in writing to the Owner that all of the Work has been finally completed and the Owner shall have received evidence satisfactory to the Owner establishing that all Work, including all "Punch List" items, has been fully and satisfactorily completed in a good and workmanlike manner, all in strict conformance with the Contract Documents and in full compliance with governing laws and regulations of authorities having jurisdiction and any legal requirements; (b) all final certificates of approval relating to the Work and the contemplated uses of each Project shall have been issued and delivered to the Owner; (c) all required receipts, releases of liens, affidavits, waivers, guarantees, warranties, bonds, record drawings, and any other documents required under this Contract or the Subcontracts shall have been issued and delivered to the Owner; and (d) all testing and training related to the installation of any equipment or materials installed as part of the Work has been received and accepted by the Owner.

2.3.2 ADMINISTRATION

2.3.2.1 Delete the words "list previously reviewed" in line 7 and replace with the following: "Owner-approved bidders' list"

2.3.2.1 Delete the third sentence beginning in line 9 with the words "The Owner" and replace with the following: "The Construction Manager shall then determine, subject to objection of the Owner and Architect, which bids will be accepted."

2.3.2.1 Delete the words "qualified bidders" in line 16 and replace with the following: "bidders on the Owner-approved bidders' list"

Delete Subparagraph 2.3.2.2 in its entirety.

2.3.2.4 Insert at the end thereof the following:

"As required by and as requested by the Owner, the Construction Manager shall schedule, conduct, and maintain minutes for additional meetings relating to specific tasks

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associated with each Project. These meetings may require the attendance of some or all of the Construction Manager’s staff as determined by the Architect. These meetings shall include, but are not limited to, meetings related to the following topics: communication and security systems; plumbing, mechanical, electrical and fire protection services; project logistics; Main Building, EROC and/or 33 Maiden Lane issues; rigging issues; and coordination with Owner’s vendors. These meetings may at times address portions of each Project that are not solely related to the Construction Manager’s scope of work.”

2.3.2.5 Delete in its entirety and replace with the following:

“For each Project subject to this Agreement, the Construction Manager shall be in strict compliance with all time periods relating to his performance under the Contract Documents that are set forth in the Project Schedule. The Construction Manager shall promptly and diligently perform, or cause to be performed, the Work in accordance with the time periods set forth in the Project Schedule.”

Add the following new Subparagraphs:

2.3.2.8 SHOP DRAWING SCHEDULE

For each Project subject to this Agreement, within fourteen (14) calendar days of the start of the Construction Phase, the Construction Manager shall submit to the Owner a detailed shop drawing schedule. This schedule shall list all required shop drawings, outline time frames for submission, review and approval of these shop drawings detail the schedule in a way that best meet the Owner’s objectives and the Project Schedule. The shop drawing schedule shall be approved by both the Owner and Architect and submission times shall be spaced at reasonable intervals so to prevent multiple submissions for review by the same discipline for the same period of time. The Construction Manager shall incorporate reasonable times for review by the Architect and Owner. The Construction Manager shall periodically review with the Architect the submittal and approval schedule and prioritize submittals requiring early review. The Construction Manager shall maintain a detailed shop drawing log and shall update and submit this log to the Owner and Architect one (1) day prior to the weekly Project meeting. Notwithstanding anything in this Agreement to the contrary, the Contractor acknowledges and agrees that the Bank considers any drawings, specifications, plans, or other similar documents, in no matter what form they may exist, that are related in any way to the Bank's layout, design, or construction ("Plans") to be very sensitive for security reasons. The Contractor further acknowledges and agrees that it shall maintain any Plans furnished by the Bank in connection with this Agreement or otherwise obtained by the Contractor in a strictly confidential and secure manner. The Contractor shall share, provide, or otherwise disclose Plans only to the Contractor's employees, agents, and subcontractors and only on a strictly need-to-know basis and shall ensure that such employees, agents, or subcontractors maintain any Plans that are disclosed to them in a strictly confidential and secure manner. At the conclusion of the Project or other termination of this Agreement,

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the Contractor shall promptly return any and all Plans to the Bank, including any Plans that it has shared with, released to, or otherwise provided to any third party.

2.3.2.9 SUBMITTAL / SHOP DRAWING SYSTEM PACKAGES

For each Project subject to this Agreement, the Construction Manager shall provide the Owner with complete and detailed "Turnover Packages" which shall contain all pertinent information of the systems being installed under the scope of work. These packages shall include shop drawings, as-built drawings, certificates, test reports, cut sheets, design specifications, specification sheets, operation manuals and instructions, etc. These "Turnover Packages" shall also include detailed specifications on each component of each system, shall be organized system by system and shall incorporate submissions of various trades into singular system packages.

2.3.2.10 REQUESTS FOR INFORMATION

For each Project subject to this Agreement, the Construction Manager shall submit all requests for information ("RFI") in writing to the Architect. The Construction Manager shall maintain a log of RFIs and update the log for submission to the Architect one (1) day prior to weekly Project meetings.

2.3.2.11 CONSTRUCTION MANAGER'S SUPERVISORY PERSONNEL

The Owner shall have the absolute right, in its sole discretion, to reject the individuals proposed by the Construction Manager for such positions as Project Manager, Project Superintendent and other staff / supervisory positions associated with each Project. Once approved, such individuals may not be removed, or others substituted, without the Owner's prior approval in each instance, unless they cease to be employed by the Construction Manager. The Owner's right to approve or disapprove the individuals to be assigned to each Project shall continue throughout the duration of each Project so that, if the Owner becomes dissatisfied with the performance of the Project Manager, Project Superintendent, or any other staff / supervisory person at any time, the Owner may require, upon three (3) days written notice to the Construction Manager, that the Construction Manager submit to the Owner for approval substitute persons to take over the duties and obligations of the Project Manager, Project Superintendent, or any other staff / supervisory person.

2.4 PROFESSIONAL SERVICES

Insert before the first sentence of Paragraph 2.4 the following:

"For each Project subject to this Agreement, the Construction Manager shall provide competent construction professionals and other Construction Manager personnel as specified in Exhibit B and as stipulated at the time of the Agreement. The Construction

Construction Manager: _____ Bank: _____

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Manager shall at all times have members of his professional construction staff satisfactory to the Owner present at the Main Building, EROC and/or 33 Maiden Lane, inclusive of but not limited to, when any of the following activities are taking place: demolition or construction, delivery of material and equipment, any testing and/or system certification, any required surveying, when the Architect and/or Owner are present and either requests the presence of the Construction Manager or when any employee of the Construction Manager or any subcontractors or their employees are in the Main Building, EROC and/or 33 Maiden Lane performing any task required for the completion of the work. The Construction Manager shall make available specific members of his professional construction staff as required by and are acceptable to the Owner.

ARTICLE 3; OWNER'S RESPONSIBILITIES

3.1 Information and Services

3.1.1 Delete the word "full" in line 1 and replace with the following: "available."

Delete section 3.1.2 in its entirety.

3.1.3 Delete section 3.1.3 in its entirety and replace with the following:

"For each Project subject to this Agreement, after the Construction Manager submits the first Preliminary Cost Estimate for each Project and the Architect has reviewed and evaluated this information, the Owner and Architect shall establish and update an overall budget for each Project, based on consultation with the Construction Manager, which shall include contingencies for changes in the Work."

Delete section 3.1.4 in its entirety.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

Insert the following new second sentence:

"However, the Owner may at any time substitute another representative upon seven (7) days prior written notice to Construction Manager."

3.3 ARCHITECT

Insert after the words "AIA Document B141" in line 4, the following: "as may be amended for each Project."

Delete the second sentence of the paragraph in its entirety.

Delete the last sentence of the paragraph in its entirety.

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3.4 LEGAL REQUIREMENTS

Delete the last sentence of the paragraph in its entirety.

ARTICLE 4; COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

4.1.1 Insert the following as the basis for compensation and Payment for pre-construction services:

“For each Project subject to this Agreement, the Owner and the Construction Manager agree to negotiate an upfront maximum fee billable on a time card basis in accordance with the hourly rates listed in Exhibit B.”

4.1.2 Delete in its entirety and replace with the following:

“Compensation for Pre-construction services shall be based on the percentage complete of the required Pre-construction Services.”

4.1.3 Delete in its entirety.

4.2.1 Delete the phrase "the Construction Manager's invoice" in line 1 and replace it with the following: "Owner's receipt of a proper invoice from the Construction Manager which is sufficiently detailed to satisfy Owner’s accounting requirements.”

4.2.2 Insert after the word “payable,” the following: “forty five (45) days.”

4.2.2 Delete the phrase "Construction Manager's invoice is received by Owner" in the first sentence and replace it with the following: "Owner's receipt of a proper invoice from the Construction Manager which is sufficiently detailed to satisfy Owner’s accounting requirements." Delete the second sentence in its entirety.

ARTICLE 5; COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Delete section 5.1.1 in its entirety and replace with the following:

“For each Project subject to this Agreement, the Construction Manager’s “General Conditions” shall include: (i) the Construction Manager’s compensation for all costs associated with performance of the Work as described in Paragraph 2.3; (ii) any costs required for the Construction Manager to complete the Work or required as part of AIA A201 and to complete the construction as required by the Contract or Construction Documents; and (iii) any costs normally associated with or included in the cost for General Conditions for a General Contractor administered construction project of similar scope, inclusive of but not limited to, all costs described in Paragraphs 6.1.1, 6.1.2, 6.1.5,

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

6.1.6 (excluding 6.1.6.4), 6.1.7, 6.1.8, and 6.1.9. The "Cost of the Work" shall also include Construction Manager's Contingency."

Add the following new Subparagraphs:

5.1.1.1 "For each Project subject to this Agreement, for compensation of these General Conditions, the Construction Manager shall be paid a percentage of the total subcontract costs required to complete the Work as required by the Contract and the Construction Documents. This percentage shall be as follows:

For projects where total subcontract costs do not exceed \$150,000 – _____%;

For projects where total subcontract costs are more than \$150,000, but less than \$300,000 – _____%;

For projects where total subcontract costs are more than \$300,000, but less than \$500,000 – _____%; and

For projects where total subcontract costs are in excess of \$500,000 – _____%."

5.1.1.1.1 "For each Project subject to this Agreement, the Owner agrees to reimburse the Construction Manager for direct costs associated with Owner-mandated work on premium time. These costs shall include the premium time portion of the wages of Construction Manager's supervisory personnel and laborers. An upfront amount for these costs shall be agreed upon before the Notice to Proceed is issued."

5.1.1.2 "For each Project subject to this Agreement, for compensation of the Construction Manager's Fee, the Construction Manager shall be paid an amount equal to _____ % (percent) of the cost of the subcontracts required to complete the Work as required by the Contract and the Construction Documents."

5.1.1.3 "For each Project subject to this Agreement, Subcontract Costs shall, include but not be limited to, the costs for all labor, equipment and materials to be manufactured, fabricated, and/or installed on, in and around the Main Building, EROC and/or 33 Maiden Lane in order to complete the construction of the Work as required by the Construction Documents and the Contract, inclusive of but not limited to, all costs described in Paragraphs, 6.1.3, 6.1.4 and 6.1.6.4."

5.1.1.4 For each Project subject to this Agreement, "Construction Manager's Contingency" shall be defined as stated in Paragraph 2.2.3. The Construction Manager's Contingency shall be fixed at the acceptance of the initial Guaranteed Maximum Price for

Construction Manager: _____ Bank: _____

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each Project and shall not exceed the following percentages of the Cost of the Work based on when the Guaranteed Maximum Price was established:

Guaranteed Maximum Price established	Maximum contingency
Prior to 100% construction documents	_____ percent
100% construction documents but prior to execution of all major Subcontracts	_____ percent
After execution of all major Subcontracts	_____ percent

5.2.1 Add the following:

“All savings within the Guaranteed Maximum Price shall be returned in full to the Owner.”

5.3 CHANGES IN THE WORK

Delete Subparagraph 5.3.1 in its entirety and replace it with the following:

“For each Project subject to this Agreement, Owner initiated or design required changes made during the design process and during generation of the Construction Documents prior to execution of Amendment No. 1 shall not alter the Guaranteed Maximum Price unless such change is a significant material change or significantly modifies the scope of the Work. The Guaranteed Maximum Price will not be altered for “unforeseen conditions” which the Owner determines, in its sole discretion, that the Construction Manager should have reasonably observed or anticipated prior to the Owner’s acceptance of the Guaranteed Maximum Price. Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1, including if and when the Owner opts to change the method of compensation and payment to a lump sum, shall be made on the basis of Subcontract Costs plus the percent of Subcontract Costs for the Construction Manager’s General Conditions, as stated in Subparagraph 5.1.1.1, plus the percent of Subcontract Costs for the Construction Manager’s Fees as stated in Subparagraph 5.1.1.2”

Delete Paragraph 5.3.4 in its entirety.

ARTICLE 6: COST OF WORK FOR CONSTRUCTION PHASE

6.1.1 Delete the word "only" in line 3 and replace with the following: "but not be limited to"

Delete Paragraph 6.1.2.2 in its entirety.

6.1.2.4 Delete the word “taxes” in line 1.

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Rename Paragraph 6.1.4 the following:

“COSTS OF MATERIAL AND EQUIPMENT INCORPORATED IN THE SUBCONTRACT COSTS”

6.1.4.1 Delete the period (.) at the end of the sentence and replace with the following: Atesting and certification of any of these materials and equipment, and any other costs for any work, including labor, materials or equipment normally performed by subcontractors under industry standard construction practices shall be incorporated into Subcontract costs.”

6.1.6 MISCELLANEOUS COSTS

Delete Paragraph 6.1.6.2 in its entirety.

6.1.6.3 At the end of the sentence insert the following: “Only those costs for fees generally required as part of a general contractors or subcontractors scope of work.”

Delete Paragraph 6.1.6.8 in its entirety.

Rename Paragraph **6.2** the following: **“COSTS INCLUDED IN THE CONSTRUCTION MANAGER’S GENERAL CONDITIONS”**

6.2.1 Delete the word “not” in line 1.

6.2.1 Insert at the end of the sentence before “:” in line 1, the following: "all of the Construction Manager’s expenses as described in this Section 6.2.1, with the exception of 6.2.1.7. Compensation for these costs shall be included in the Construction Manager’s Compensation for General Conditions and shall include, but not be limited to, the following.”

ARTICLE 7: CONSTRUCTION PHASE

7.1.7.1 Insert after the words "percentage completion" in line 2, the following: "as determined by the Architect”

7.2.4 In line 3, delete the words “mediation or arbitration” and insert the word “resolution.”

Construction Manager: _____ Bank: _____

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ARTICLE 8; INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

Insert the following at the end of Paragraph 8.1:

“The Construction Manager shall purchase and maintain, as primary Insurance, minimum limits of Insurance as set forth below to protect itself from claims arising out of or resulting from the Construction Manager’s operations under the Contract, whether such operations are undertaken by the Construction Manager, any Subcontractors, and/or by any person and/or entity for which any of the foregoing may be liable:

- 1) Claims under workers compensation, disability benefits, and other similar employee benefit acts;
- 2) Claims for damages for bodily injury, occupational sickness or disease, or the death of any employee of the Construction Manager, and/or any Subcontractors;
- 3) Claims for damages for of bodily injury, occupational sickness or disease, or the death of any person other than an employee of the Construction Manager or Subcontractor;
- 4) Claims for damages for Personal and Advertising injury which are:
 - (a) Sustained by any person as a result of an occurrence directly or indirectly related to the employment of such person by the Construction Manager, and/or,
 - (b) Sustained by any other person.
- 5) Claims for damage to the Work, including loss of use, and including the cost to remove, replace, or restore the Work, which arise from injury to or destruction of tangible property, or arise from the inadequate installation of, or provision of, or defects in, the Work;
- 6) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and/or
- 7) Claims for damages because of bodily injury or death of any person or because of property damage arising out of any motor vehicle, machinery or equipment.”

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Insert the following new Subparagraph 8.1.1.0:

Insurance Definitions

“Advertising Injury” – An injury arising from advertising activities, employee publications and all other oral, written, televised, videotaped, electrically transmitted or any otherwise disseminated materials, for: Libel, slander, defamation, or disparagement; Violation of right of privacy; Misappropriation of ideas; Infringement of copyright, trademark, title, or slogan; or Unfair competition.

“Bodily Injury” – The definition of bodily injury is to include physical injury, sickness, disease, death, mental injury, emotional anguish, shock or humiliation.

“Occurrence” - An event, or continuous or repeated exposure to conditions, which cause injury during the Policy period. All such exposure to substantially the same general conditions at or emanating from the insured location or insured project shall be deemed one “occurrence.”

“Personal Injury” – Injury sustained as a result of wrongful eviction, false arrest, detention or imprisonment, malicious prosecution, libel, slander or defamation, invasion of privacy, wrongful entry or dismissal, or discrimination.

“Property Damage” – All risk of physical loss of or damage to real and personal property, including the loss of use thereof.

Insert the following in Paragraph 8.1.1:

“Workers’ Compensation and Employer’s Liability Insurance as required by all applicable local, State and/or Federal laws, and including a Voluntary Employers Liability Rider. All certificates of insurance must specifically note that the statutory provisions of the state or district where the Work is located apply. The Employer’s Liability Insurance shall be written for no less than the following limits, or for an unlimited amount if allowable by the appropriate state of jurisdiction:

- (a) Bodily Injury by Accident - \$1,000,000 Each Accident
- (b) Bodily Injury by Disease - \$1,000,000 Policy Limit
- (c) Bodily Injury by Disease - \$1,000,000 Each Employee”

Construction Manager: _____ Bank: _____

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Delete the lines and descriptions immediately following Paragraph 8.1.2 and replace as follows:

“Comprehensive General Liability Insurance (broad form), written on an “occurrence” basis, including a per-project/per-location amendment to the general aggregate limit. Such policy shall provide cover for Bodily Injury and Property Damage, and for Personal & Advertising injury:

- (a) Minimum Limits of Liability:
 - (i) Bodily Injury and Property Damage Per Occurrence Combined
Single Limit: \$1,000,000
 - (ii) General Aggregate: \$2,000,000
 - (iii) Products and Completed Operations Per Occurrence and
Aggregate: \$2,000,000
 - (iv) Personal & Advertising Injury: \$1,000,000
 - (v) Medical Payments: \$10,000

- (b) The Comprehensive General Liability Policy shall provide insurance for the Construction Manager for Bodily Injury (including mental anguish and emotional distress) to third parties, Personal Injury to third parties, and Property Damage to third parties' property, other than to the Work, arising out of or resulting from:
 - (i) Operations of the Construction Manager or it's employees, called “Premises Operations;”
 - (ii) Work performed by any of the Subcontractors, called “Sublet Work” or “Independent Construction Managers;”
 - (iii) Broad Form Construction Manager's Liability, called “Hold Harmless Clauses” or “Indemnity Agreements;”
 - (iv) Products Liability and Completed Operations Insurance covering claims arising from the work during the duration of the project and for a period of two years after the completion of the project;

- (c) Such policy shall contain no restriction on work operations involving underground structures, piping, utilities, sewers, excavating, sheeting, shoring and/or similar constructed improvements; and

- (d) Such policy shall contain no restriction on claims arising from property damage caused by explosion and/or collapse of or damage to underground structures, piping, utilities, sewers, excavating, sheeting, shoring, and/or similar constructed improvements.

The Construction Manager's insurance required under this paragraph shall be written for no less than any limits of liability as herein specified, or as required by law, whichever is greater, by a company or companies licensed to do business in the State of New York, and/or in the district where the Work is located. Such companies shall have a minimum “A-” or better policyholder's

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rating, and a "Class XI" or better financial rating as listed in the most current edition of the A.M. Best Insurance Guide available on the date of the execution of the Contract."

Insert the following in Paragraph 8.1.3:

Comprehensive Automobile Liability insurance, providing coverage for Bodily Injury and Property Damage for claims arising from the operation, use, and/or loading and unloading of any motor vehicle:

- (a) Limit of Liability - \$1,000,000.
- (b) The policy shall contain no exclusion for liability assumed under contract.

Insert the following in Paragraph 8.1.4:

Excess or Umbrella Liability Insurance in an amount not less than \$25,000,000 following the forms and amounts of primary General Liability, Automobile, and Workers' Compensation and Employers Liability Insurance as described in Subparagraph A hereof.

If required by the Owner for a Project, the Construction Manager will obtain and the Owner will reimburse the cost for Construction Manager's Pollution Legal Liability Insurance, with limits not less than \$2,000,000 per loss with a \$5,000,000 aggregate to provide coverage for any environmental claims incurred in connection with the Contract, and occurring on or away from the premises. Policy shall include coverage for both third party pollution liability and remediation. Policy shall include Bank as a Named Insured and shall include cover for completed operations for a two (2) year period beyond the completion of the contract.

If required by the Owner for a Project, the Construction Manager will obtain and the Owner will reimburse the cost for Errors and Omissions coverage with limits no less than \$5,000,000 per occurrence and \$5,000,000 any aggregate, providing coverage for loss or damage resulting from Construction Manager's professional errors and omissions or wrongful acts committed in the course of advising on any and all environmental matters; and/or wrongful acts committed in the course of rendering, or failing to render, professional services, such as architectural, engineering, surveying, or other such services, which are undertaken in connection with the Contract.

Unless specifically excepted by the Bank, Builder's Risk Insurance providing coverage to all supplies, materials, and equipment, required for the Work, until such supplies, materials, or equipment is installed and accepted by the Bank.

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All of the insurance coverage described in this Article 8 maintained by the Construction Manager shall provide that:

- (1) The Bank shall be included in the policy as Additional Insured, as its interest may appear, with the understanding that any obligation imposed upon the insured parties, including, but not limited to, the liability to pay premiums, shall be the sole obligations of the Construction Manager and not the Bank.
- (2) Construction Manager and its Subcontractors expressly waive all rights of subrogation, set-off, and counterclaim against the Bank for damages payable by Insurance obtained pursuant to this Agreement or any insurance coverage's applicable to the work. The policies of insurance required to be carried by Construction Manager and all Subcontractors shall provide such Waivers of Subrogation by endorsement or policy language.
- (3) The Construction Manager's insurance policies shall be endorsed so as to indicate that its policies provide primary and non-contributory coverage for all claims of any type or nature against the Bank, arising out of or resulting from the provision of the Work by the Construction Manager, and/or any Subcontractors. Any other valid and collectable insurance which includes the Bank as Named Insured shall in no instance be considered as primary, co-insurance, or contributing insurance. (The Construction Manager's policy may allow the Subcontractor's policy to provide primary cover in the event of a claim arising from the Subcontractor's negligence.) These policies shall further be endorsed to allow Cross-Claim and Severability of Interest Endorsements for claims due to the actions and/or inaction of the Construction Manager and/or any Subcontractor.
- (4) All losses shall be payable without restriction on the nature of the Work, the occupation of the Construction Manager or use of the Work and/or the site, or portion(s) thereof.

The Construction Manager shall require each of the Subcontractors to procure and maintain Insurance coverage with Terms and Conditions equal to or exceeding those specified above in this Section 8.1. Such coverage shall remain in effect until the approved completion of such Subcontractor's portion of the Work, and for an extended period, as specified above, for exposure arising from the completed operations. The Construction Manager shall be solely responsible for ensuring that each such Subcontractor complies with all of the insurance requirements hereunder. The Construction Manager is further charged with monitoring each Subcontractor's compliance with this provision.

A Certificate of Insurance signed by the insurance carrier or the carrier's authorized agent stating the limits of the liability and the expiration date of each coverage, and warranting the Construction Manager's compliance with the above specified provisions shall be delivered to the Bank prior to the commencement of the Work. Additionally, such carrier

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

or such authorized agent shall provide a warranty statement that the insurance requirements under the Article A have been fully met and are covered under such certificate. Should the initial insurance policy expire prior to the final completion of the Work, a renewal certificate and additional warranty statement shall be furnished to the Bank not later than 30 days prior to such expiration date. All certificates shall contain a provision that coverage shall not be canceled, materially amended, or allowed to expire without at least sixty (60) day prior written notice to the Bank.

The Construction Manager shall, at all times through final completion of the Work, carry and maintain, at the Construction Manager’s sole expense, full replacement cost coverages for damages to or loss of the Construction Manager’s assets, including tools, equipment, material, and facilities required for his provision of the Work.

The Owner shall continue to occupy or use a portion or portions of the Work prior to Substantial Completion thereof. The Contractor shall insure that the insurance company or companies providing the property insurance have consented to this occupancy and use by endorsement to the policy or policies. The insurance shall not be canceled or lapsed on account of such partial occupancy or use.

Compliance by the Construction Manager with the insurance requirements set forth in this Article 8 shall not relieve the Construction Manager of any liability arising from any indemnity or other such agreement as set forth in the contract documents, nor shall the Construction Manager’s liability, be limited by the amount of any applicable insurance.

Delete in line 1, the words “at least” in Paragraph 8.1.2.2.

Insert in line 1, the number “2” before the word “year(s).” in Paragraph 8.1.2.2.

Delete in line 2, the words, “either ninety (90) days following Substantial Completion or” in Paragraph 8.1.2.2.

Insert in line 2 of Paragraph 8.1.2.3 at the end thereof, the words “and shall be as follows:

Bodily Injury:	\$5,000,000 Each Occurrence
Bodily Injury:	\$5,000,000 Aggregate
Property Damage:	\$5,000,000 Each Occurrence
Property Damage:	\$5,000,000 Aggregate”

Add the following new Subparagraph 8.1.2.4:

If the General Liability coverages are provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination

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date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2 of AIA A201.

8.2 INSURANCE REQUIRED BY THE OWNER

Delete section 8.2 in its entirety and replace with the following:

The Owner shall not be obligated to procure or maintain any form of fire (property), liability, or other insurance.

Notwithstanding the foregoing, the Owner understands and accepts that because the Owner is not providing such Builders Risk Insurance, that the Construction Manager will provide same within the cost of the GMP as part of the Cost of the Work as a separate direct cost work item (not included within the Construction Manager’s general conditions or fee).

If requested by the Bank, the Construction Manager shall purchase and maintain for the benefit of the Bank, Owner’s Protective Liability Insurance as a separate policy or as an endorsement to the Construction Manager’s Comprehensive General Liability Policy. Such separate policy or endorsement shall be written with the same limits of liability as specified above. If the Construction Manager is notified in writing by the Bank, prior to the date of the execution of the Contract, of the Bank’s intention to require such Owner’s Protective Liability insurance, the Construction Manager’s costs for providing such insurance shall be deemed to be included in the Contract Sum, as set forth in the Contract. If the Construction Manager is notified in writing by the Bank, following the date of the execution of the Contract, of the Bank’s intention to require such insurance, the Contract Sum, as set forth in the Contract, shall be increased by an amount equal to the Construction Manager’s costs of furnishing such insurance. In either of the aforesaid circumstances, the Construction Manager shall be required to produce satisfactory evidence to the Bank of the cost of such insurance, as the Bank may require. The Bank, at its option, shall have the right to purchase and maintain other insurance to protect itself against claims which may arise out of or result from the actions and/or inactions of the Construction Manager, and/or any Subcontractors, with such other insurance being purchased by the Bank in excess of that provided by the Construction Manager hereunder.

8.3 PERFORMANCE BOND AND PAYMENT BOND

Insert the word “shall” in line 1 in between the words “Manager” and “furnish.” in Paragraph 8.3.1.

Delete the last sentence in its entirety in Paragraph 8.3.1.

Construction Manager: _____ Bank: _____

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ARTICLE 9; MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION FOR THE PRECONSTRUCTION PHASE

Delete Paragraphs 9.1.1, 9.1.2 and 9.1.3 in their entirety and substitute with the following:

At the exclusive option of the Owner, all claims, disputes and other matters in question between the parties to this Contract, arising out of or relating to this Contract or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties agree otherwise. Any and all arbitration arising out of or relating to this Contract shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Contract to the extent necessary to the final resolution of the matter in controversy. This Contract to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Contract shall be specifically enforceable under the prevailing arbitration law.

Insert the following new second and third sentences in Paragraph 9.1.4: “Any demand for arbitration made by any party other than the Owner shall not be binding on the Owner. Any demand for arbitration made by the Owner shall be binding on the Owner.”

Delete Section 9.1.5 in its entirety.

Add a new Paragraph immediately after Paragraph 9.1.6:

9.1.7. At the Owner’s option, the location for settlement of any and all claims, controversies or disputes arising out of or related to this Contract or any breach thereof whether by arbitration or litigation shall be New York, New York.

9.2 DISPUTE RESOLUTION FOR THE CONSTRUCTION PHASE

Delete in its entirety.

9.3.2 EXTENT OF CONTRACT

Delete the last sentence in its entirety.

9.3.4 GOVERNING LAW

Delete in its entirety and substitute with the following:

This Contract and the rights and obligations under this Contract shall be governed by and construed in accordance with the Federal law of the United States of America and, in the

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

absence of controlling Federal law, in accordance with the law of the State of New York, notwithstanding New York's choice of law rules.

Add the following Paragraph 9.3.6:

Any notice or other communication required or permitted to be given or delivered under this Contract shall be in writing and shall be sufficiently given if delivered personally, which shall be required with regard to notices applicable to a material breach, or sent by telegram or cable, or mailed by first-class or overnight delivery mail, return receipt requested, postage prepaid, as follows:

To Owner:

Federal Reserve Bank of New York
33 Liberty Street
New York, N.Y. 10045
Attn.: Richard Prisco, REGS Officer

To Construction Manager:

Attn:

Or to such other address or addresses as either party may from time to time designate to the other by written notice. Any notice shall be deemed to be given when received.

ARTICLE 10; TERMINATION OR SUSPENSION

Delete Paragraph 10.1 in its entirety and replace with the following:

OWNER'S UNRESTRICTED RIGHT TO TERMINATE: Notwithstanding anything in this Contract to the contrary, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate this Contract at any time at its sole discretion, with or without cause, without liability of any kind. In such event, the Owner shall only be obligated to pay the Construction Manager any Cost of Construction Manager's Services for services rendered prior to that time. Further, the Owner may assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions of the Construction Manager's Services to another Construction Manager acceptable to the Owner.

Delete Paragraph 10.2 in its entirety.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Delete Paragraph 10.3 in its entirety.

ARTICLE 11; OTHER CONDITIONS AND SERVICES

Add the following:

11.1 COMPLIANCE WITH OWNER RULES AND REGULATIONS: All services provided by and work performed by the Construction Manager shall be subject to and comply with all applicable provisions of the Owner’s Main Building, EROC and/or 33 Maiden Lane Rules and Regulations. Without limiting the foregoing, Construction Manager shall comply with, and Owner will bear no liability or cost for, the provisions which require the removal of any contractor or subcontractor which the Owner determines is responsible for a labor conflict or dispute that has interrupted or otherwise effected the operation of Owner or Owner services.

11.2 CONSTRUCTION MANAGER'S CONDITIONAL RIGHT OF ENTRY: Any person or persons designated by Construction Manager but subject to the reasonable approval of the Owner shall have the right to enter the Owner’s Main Building, EROC and/or 33 Maiden Lane during the Owner's business hours and upon notice to the Owner or any other reasonable time agreed to by the Owner and subject to the Owner's reasonable security arrangements and the provisions of the Contract for the purpose of performing obligations under this Contract. A reasonable, security-related denial or restriction of access by Owner either for security reasons or because of an operational requirement shall not constitute a breach of this Contract or affect Owner's rights or Construction Manager's obligations. Owner may conduct security investigations relating to Construction Manager personnel having access to Owner's facilities similar to investigations conducted with respect to Owner's own employees. Owner may request substitution of Construction Manager agents, employees and representatives for reasons relating to Owner security. It is understood that the person(s) designated by Construction Manager to have access to the Owner's premises will be Construction Manager's personnel, unless the Owner is notified and agrees to the contrary. The Contractor shall not provide individuals to the Bank who are unauthorized to work in the United States. The Construction Manager shall also indemnify the Bank for any penalties assessed against the Bank by the Immigration and Nationalization Service with regard to the knowing hiring of unauthorized workers, as well as any legal fees incurred by the Bank in defense of a related investigation by any branch of the United States Government.

11.3 MAINTENANCE OF RECORDS: The Construction Manager shall maintain and keep, for a period of at least six (6) years after the date of Final Acceptance, all records and other data relating to the Work. The Owner or the Owner’s representative shall have the right to inspect and audit all records and other data of the Construction Manager relating to the Work.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

11.4 DAVIS-BACON ACT: The Construction Manager and all Subcontractors shall be required to pay all laborers and mechanics employed or working upon the site of the Work the full amount of wage and fringe benefits due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor applicable to the class of work performed at the site of the Work. Although the Reserve Banks have taken the position that they are not legally subject to the Davis-Bacon Act and the implementing regulations, (40 U.S.C. § 276a et seq. and 29 CFR Part 5) this action is taken in recognition of the policy of the Act. The Construction Manager and all Subcontractors may not rely on the position of the Bank as a defense for noncompliance with the wage requirements of the Davis-Bacon Act.

11.5 SMALL AND DISADVANTAGE BUSINESSES: To the extent consistent with the U.S. Court Decision in Adarand Constructors v. Pena, Owner has a policy of assisting small businesses and disadvantaged small business in participating in the performance of Owner's contracts. Construction Manager hereby agrees to carry out this policy in the awarding of subcontracts connected with this Contract to the fullest extent consistent with the efficient performance of this Contract. Construction Manager further agrees to furnish to Owner information demonstrating Construction Manager's compliance with this clause, upon request by Owner.

11.5.1 As used in this Contract, the term "small business" means a business qualifying as a small business concern under Article 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term "disadvantaged small business" means small business--

- (1) At least 51 percent (51%) owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent (51%) of the stock of the business is owned by one or more socially disadvantaged individuals; and
- (2) whose management and daily business operations are controlled by one or more such individuals. Construction Manager shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and any other minorities, or any other individual found to be disadvantaged by the Small Administration pursuant to Article 8(a) of the Small Business Act.

11.5.2. Construction Manager, acting in good faith, may rely on written representations by its subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

11.6 FORCE MAJEURE: Neither party shall be liable for its failure or delay in performance of its obligations under this Contract due to strikes, wars, revolutions, fires, floods, explosions, earthquakes, statutes or government regulations, or other causes beyond its control.

11.7 JURISDICTION: The exclusive jurisdiction for any legal action or proceeding arising under this Contract shall be the United States District Court for the Southern District of New York, and the parties expressly submit to the jurisdiction of that court.

11.8 SEVERABILITY: If any provision of this Contract is held invalid, illegal, or unenforceable, the remainder of this Contract shall not be affected thereby. If any portion of this Contract is held by a court of competent jurisdiction to conflict with any Federal, State, or local law or regulation, such portion of this Agreement is hereby declared to be of such force and effect as is permissible in such jurisdiction.

11.9 NO DISCLOSURE OF OWNER INFORMATION: Construction Manager acknowledges that any information regarding the Owner, including but not limited to, its operation, business practices, or security procedures obtained by Construction Manager, its agents or employees while performing the Agreement are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner's prior written consent.

11.10 ADVERTISING: Construction Manager shall not use the Owner's name or any adaptation or variation of the Owner's name in any advertising, promotional material, or other publication, or otherwise publicize or communicate Construction Manager's relationship with the Owner, without the Owner's prior written consent.

11.11 TAXES: Notwithstanding any provisions to the contrary, the Owner shall not be billed for or obligated to pay any taxes, including local, State or Federal sales, use or gross receipt taxes, from which the Owner, as a Federal Reserve Bank, is exempt pursuant to Section 7 of the Federal Reserve Act (12 U.S.C. § 531).

11.12 BACKGROUND INVESTIGATIONS: Because of the sensitive and confidential information about the Bank's business affairs, operation and security procedures which the Construction Manager may be given or have access to during the term of this Agreement, the Bank will conduct background investigations of the Construction Manager at the Construction Manager's expense. In the Bank's sole discretion, the Bank may conduct more than one such background investigation during the term of this Agreement and such investigations may include, but not be limited to, researching the Construction Manager's ownership, business history and record of ethical conduct. If (i) the Construction Manager fails to promptly cooperate with any such background investigations or (ii) the Bank determines, in its sole discretion, that the results of any background investigation are not satisfactory to the Bank, the Bank may, at its sole option,

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

terminate this Agreement immediately and without any liability on behalf of the Bank, other than to pay the Construction Manager of any services that have been properly rendered under this Agreement as of the date of termination. In the event the Bank terminates this Agreement in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Construction Manager of the specific results of the background check or why the Bank deemed those results unsatisfactory.

IN WITNESS WHEREOF, the parties have duly executed this Contract on the dates set forth below:

AGREED:

AGREED:

**FEDERAL RESERVE BANK OF
NEW YORK**

[SIGNATURE]

[SIGNATURE]

[PRINT NAME]

[PRINT NAME]

[TITLE]

[TITLE]

[DATE]

[DATE]

Exhibit B

Key Members of Construction Manager's Staff

For the term of Services, the following hourly rates shall apply in compensation for Pre-Construction Phase Services for each Project subject to this Agreement:

Project Executive	\$	/hr
Project Manager	\$	/hr
General Superintendent	\$	/hr
Senior Estimator	\$	/hr
Quality Control Director	\$	/hr
Estimator	\$	/hr

For the term of Services, the following hourly rates shall apply in compensation for Construction Phase Services for each Project subject to this Agreement:

Project Executive	\$	/hr
Project Manager	\$	/hr
Asst. Project Manager	\$	/hr
General Superintendent	\$	/hr
Superintendent	\$	/hr
Senior Estimator	\$	/hr
Estimator	\$	/hr
Accountant	\$	/hr
Laborer	\$	/hr

FEDERAL RESERVE BANK OF NEW YORK
SUPPLEMENTARY CONDITIONS

The following Supplementary Conditions modify the "General Conditions of the Contract for Construction," AIA Document A201, Fourteenth Edition, 1987. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. In the event of any inconsistency between the Supplementary Conditions and the General Conditions, the Supplementary Conditions shall govern. The entire contract between the parties shall consist of the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, AIA Document A121/CMc and Document 565, 1991 Edition, dated _____ between _____ (the "Contractor" or "Construction Manager" or "CM") and the Federal Reserve Bank of New York ("Owner" or "Bank") as amended by the Bank (as amended the "Agreement" or "AIA A121"), the AIA Document A201, Fourteenth Edition, 1987 as it may be amended by these Supplementary Conditions (as amended, "AIA A201"), any Addendums, and the Contract Documents (as such term is defined in Subparagraph 1.1.1 below) (together, the "Contract"). To the extent that any provisions of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of the relevant Project and the Owner shall prevail.

ARTICLE 1. GENERAL PROVISIONS

1.1.1 The Contract Documents

Paragraph 1.1.1: Delete the first sentence and replace it with:

The "Contract Documents" means the Contract, together with all Modifications thereto, the Construction Documents and Specifications and the Exhibits to this Contract listed in Subparagraph 1.0.1 of the Agreement, which are attached thereto or deemed to be incorporated in this Contract as they are developed. The Contract Documents constitute the entire agreement between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents do not include any bidding documents, such as any advertisements or invitations to bid, any instructions to bidders, any requests for proposals, any sample forms, any contractor or subcontractor bids or portions or addenda relating to these or any other documents, unless otherwise specifically enumerated in this Contract.

Add the following Subparagraph 1.1.1.0:

The intent of the Contract Documents, once they are seventy-five percent (75%) complete or greater, is to include all items reasonably necessary for the proper execution and completion of the Work. The drawings and specifications are mutually reciprocal and complementary. Whatever is required by any one shall be as binding as if called for by

CM: _____ Bank: _____

Date: _____ Date: _____

all. Where conflicts occur between information stated or shown on the Contract Documents, the Architect shall determine the course of action to be followed by the Contractor. The more expensive method, the better quality, or greater quantity of material, shown, specified, or required, shall govern unless the Architect directs otherwise. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.1.3 The Work

Add the following sentences at the end of the existing Paragraph 1.1.3:

Without limiting the foregoing, “Work” shall have the meaning that is defined in Article 1.1.3 of AIA A201 and shall include in general, but is not limited to, the following: any construction and services required by the Contract Documents as well as any services necessary for completion of each Project subject to this Agreement. The Work shall include all supervisory personnel; labor; materials; tools; supplies; equipment; additional services; scaffolding; transportation; licenses; etc., as well as any other methods of construction necessary for each Project completion required of the Construction Manager by the Contract Documents as further defined by the Guaranteed Maximum Price (“GMP”) when accepted by the Owner, even items or services which are not specifically stated in the Contract Documents, but which are required under standard construction practices for this type of office environment or can be reasonably inferred for a construction project of this nature; such items shall be assumed to be included in the scope of the Work. The Work shall also encompass any task or service that is required for the Construction Manager to turn over to the Owner a complete and quality finished construction project including all required permit signoffs and inspections from any authorities having jurisdiction. The Work does not include Pre-Construction Services performed by the Construction Manager. The Work may constitute the whole or a part of each Project.

1.1.4 Each Project

Add the following to the end of Paragraph 1.1.4:

Without limiting the foregoing, “Project” shall include the overall undertaking in which the Architect, Owner, Construction Manager and others will participate to complete the necessary building modifications and construction required to achieve the goals stated in the Program and Schedule Notice, authorization to commence each Project, the Notice to Proceed and the Contract Documents. Each Project shall include services required under the Contract (all phases), including the performance and completion of the Work, as well as the services required by the Architect and any other consultants or contractors the Owner may engage to assist in the completion of the Work and any tasks associated with each Project.

CM: _____ Bank: _____

Date: _____ Date: _____

1.1.5 The Drawings

Add the following Subparagraph 1.1.5.0:

Every copy including all originals of Drawings, Specifications, and Shop Drawings for any portion of the security system, vaults or other storage areas for valuable property shall be delivered to Owner upon Final Completion of the Work or other termination of the Contract. No such Specifications, Drawings or Shop Drawings shall be copied or duplicated without Owner’s prior written approval. Each copy of such Specifications, Drawings and Shop Drawings shall be serially numbered and Contractor shall maintain a list, by number of the recipient of each such document. Notwithstanding anything in this Agreement to the contrary, the Contractor acknowledges and agrees that the Bank considers any drawings, specifications, plans, or other similar documents, in no matter what form they may exist, that are related in any way to the Bank's layout, design, or construction ("Plans") to be very sensitive for security reasons. The Contractor further acknowledges and agrees that it shall maintain any Plans furnished by the Bank in connection with this Agreement or otherwise obtained by the Contractor in a strictly confidential and secure manner. The Contractor shall share, provide, or otherwise disclose Plans only to the Contractor's employees, agents, and subcontractors and only on a strictly need-to-know basis and shall ensure that such employees, agents, or subcontractors maintain any Plans that are disclosed to them in a strictly confidential and secure manner. At the conclusion of the Project or other termination of this Agreement, the Contractor shall promptly return any and all Plans to the Bank, including any Plans that it has shared with, released to, or otherwise provided to any third party.

1.2 Execution, Correlation and Intent

Add the following to the end of subparagraph 1.2.1:

The Contract Documents shall be signed in not less than quadruplicate by the Owner and Contractor.

Insert the following after the word “Documents” in line one of Subparagraph 1.2.3.0 “once they are seventy-five percent (75%) complete or greater,”

ARTICLE 2. OWNER

2.2 Information and Services Required of the Owner

Delete Subparagraph 2.2.1 in its entirety.

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Date: _____ Date: _____

2.4 Owner’s Right to Carry Out the Work

Amend Subparagraph 2.4.1 after the word “Contractor” in line 6 by inserting “and the surety or sureties for the Performance Bond and the Labor and Material Payment Bonds given by the Contractor.”

ARTICLE 3. CONTRACTOR

3.1 Definition

Delete the first sentence of Subparagraph 3.1.1 and replace it with the following:

The Contractor is the person or entity identified as Construction Manager in the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor (AIA Document A121/CMc and Document 565, 1991 Edition), dated _____ between _____ and the Bank, inclusive of its rider, and is referred to throughout the Contract Documents as if singular in number.

3.2 Review of Contract Documents and Field Conditions by the Contractor

Add to the following Subparagraph 3.2.4:

If the Owner determines, in its sole discretion, that the Contractor is unnecessarily submitting Requests For Information (“RFI”) and by this is disrupting the progress of the Work and/or each Project, the Owner will so notify the Contractor in writing. After Owner provides such notification, the Contractor shall reimburse the Owner for all costs associated with Architect’s analysis and response for any further RFI’s if the Owner, in its sole discretion, determines that the information required to “answer” the RFI is contained within the Contract Documents.

Add the word “Sub-subcontractors” after the word Subcontractors in line 2 of Subparagraph 3.3.2.

Add the following Subparagraph 3.3.5:

The Contractor and not the Owner shall be responsible for determining the point at which the work of one subcontractor terminates and that another subcontractor commences.

Add the following Subparagraph 3.3.6:

All arrangements for shutdowns, tie-ins, tests, use of elevators, loading docks, any existing building system, as well as any work effort of the Contractor shall be in conformance with the Main Building, EROC and/or 33 Maiden Lane’s rules and

CM: _____ Bank: _____

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regulations. The costs for any resulting Construction Manager’s staff supervision overtime shall be included in the Contractor’s General Conditions.

Add the following Subparagraph 3.3.7:

It shall be the Contractor’s responsibility under the Contract to convey equipment, machinery, materials, and any other items required for completion of the Work, into the Main Building, EROC and/or 33 Maiden Lane and through the Main Building, EROC and/or 33 Maiden Lane to their designated or required location. The Contractor shall use appropriate conveying methods dictated by the size, weight, and other governing characteristics of the items being conveyed. Where special equipment (such as sidewalk lifts, cranes, or similar items) is required, such equipment shall be included under the Cost of the Work and any costs to the Construction Manager for the supervision or administration of such work shall be included in the cost of the General Conditions. Where it is necessary to remove exterior windows, internal partitions, removable floor slabs, doors, piping, ducts, conduit, and any other items of building construction in order to convey the materials, equipment, machinery, etc. into the Main Building, EROC and/or 33 Maiden Lane and to their final destination within the Main Building, EROC and/or 33 Maiden Lane, such items shall be removed and replaced under the Contract. Replaced items shall match removed items in all respects. Interrupted systems shall be restored to their original state. In addition, it shall be the Contractor’s responsibility under the Contract to protect all Main Building, EROC and/or 33 Maiden Lane surfaces, materials, equipment, finishes, etc., in the path of the conveying operations. Such protection shall be constructed of materials adequate for their intended usage, and acceptable to the Owner regarding appearance and adequacy of the protective measures.

Add the following Subparagraph 3.3.8:

Materials or items required in connection with the Work and which are of a size and weight which will allow them to be transported in an existing elevator without overloading the elevator, shall be delivered through the loading and delivery area at times convenient to the Owner, and transported by way of an existing elevator to the floor or general area of the Main Building, EROC and/or 33 Maiden Lane where it is to be installed, or to be designated temporary storage locations. The Contractor shall provide suitable hoisting equipment and methods for transporting items which will not be accommodated by existing elevators. If a Hoisting Engineer(s) or any other Labor, or other requirement of any type is necessary for the Contractor’s use of the Main Building, EROC and/or 33 Maiden Lane’s existing elevator(s) it shall be provided for the Contractor under the Cost of the Work.

Add the following Subparagraph 3.3.9:

Where it would be impossible to convey equipment, machinery, etc. into the Main Building, EROC and/or 33 Maiden Lane through an external window or other existing

CM: _____ Bank: _____

Date: _____ Date: _____

opening due to the size of the item, such items shall be manufactured in such manner that they can be delivered in smaller component parts which can be assembled within the Main Building, EROC and/or 33 Maiden Lane at the final location of the item. When the Contractor proposes to use such disassembled items, prior approval first must be obtained from the Owner and the Architect. Where approval is given for delivering items in parts which are to be assembled within the site, such manner of delivery and assembly shall be a basic design feature of the item. Shop Drawings shall be submitted which clearly show the various components and their assembly. The manufacturer of the item shall agree in writing that such method of erection is not objectionable to the manufacturer, and will not adversely affect any warranties or operations of the item. At the Owner's option and prior to shipment from the manufacturer's facility, the equipment or item shall be completely assembled and tested in the presence of a representative of the Owner. The item shall be field assembled at the site with labor satisfactory to the manufacturer and under the supervision of the manufacturer, and shall be proven to be in acceptable operating condition, as determined by the Architect. All cost for the forgoing procedure shall be included in the GMP contract proposal.

Add the following Subparagraph 3.3.10:

An existing elevator may be made available upon request and at the discretion of the Owner, depending upon the Owner's other needs. The Contractor shall provide notice in writing to the Owner each time the use of elevators is required by the Contractor. Care shall be taken by the Contractor in loading equipment, materials and debris in the elevator to avoid damage to the elevator car. The Contractor shall provide and install protective mats, siding and flooring as required for adequate protection of the elevator(s). Contractor shall repair any damage to the Main Building, EROC and/or 33 Maiden Lane or equipment caused by the Contractor. Such repairs shall be made to the Owner's satisfaction at a time convenient to the Owner and at no additional increase to the GMP, regardless of overtime requirements.

Add the following Subparagraph 3.3.11:

The Contractor will be limited in the storage of materials and equipment required for each Project to areas of work on the floor level of the Main Building, EROC and/or 33 Maiden Lane where work is to be performed, or such other area(s) as designated by the Owner, and shall place upon any area of the Main Building, EROC and/or 33 Maiden Lane only such loads as are consistent with the structural capability and safety of such areas.

Add the following Subparagraph 3.3.12:

Work areas for the Contractor and his subcontractors shall be restricted to the area of work, on each of the floor levels of the Main Building, EROC and/or 33 Maiden Lane where work is to be performed and to other areas related to the work as designated by the Owner.

CM: _____ Bank: _____

Date: _____ Date: _____

Add the following Subparagraph 3.3.13:

Space for Contractor’s field office will be made available in the Main Building, EROC and/or 33 Maiden Lane by the Owner.

Add the following Subparagraph 3.3.14:

The Contractor, all workmen and other persons requiring access into the Main Building, EROC and/or 33 Maiden Lane for any purpose in connection with the contract Work will be required to enter the Main Building, EROC and/or 33 Maiden Lane by way of the main entrance, and on each entrance shall report to the Central Watch Room, Protection Division, to obtain clearance and an escort or identification badge or button permitting them to traffic in the Main Building, EROC and/or 33 Maiden Lane. Permission to remove from the Main Building, EROC and/or 33 Maiden Lane all packages, tools, tool boxes and lunch boxes will require a building pass and clearance from the aforesaid Central Watch Room in each instance.

Add the following Subparagraph 3.3.15:

To facilitate keeping the premises in clean and orderly condition during progress of the work, the Contractor shall provide and maintain sufficient metal receptacles within the areas of work for temporary placement of rubbish by persons employed by the Contractor.

Add the following Subparagraph 3.3.16:

To the extent applicable to Work under the Contract, the Contractor and each of his subcontractors in execution of the Work shall comply with Rules and Regulations of the Occupational Safety and Health Administration (OSHA) United States Department of Labor under authority established by the Occupational Safety and Health Act of 1970 and all amendments to date of Contract signing.

Add the following Subparagraph 3.3.17:

Methods and paths for delivery and storage of materials to be used in the Work, workers travel, and for removal of materials and debris resulting from the Work, in addition to the specific requirements in connection therewith called for elsewhere in the Specifications, shall be subject to Owner’s approval.

Add the following Subparagraph 3.3.18:

The Contractor shall make certain before requesting that any specific space or area within the Building be vacated and/or turned over to him for alterations or new work, that he and his subcontractors have on hand sufficient materials and equipment to start work and have sources available for obtaining additional materials and equipment so as to permit

CM: _____ Bank: _____

Date: _____ Date: _____

completion of work in such space or area without unnecessary interruption or delay after such work has been started. At the request of the Owner, the Contractor shall produce at the work site all materials or equipment necessary for the performance of work requiring a shutdown of the Owner’s equipment or Main Building, EROC and/or 33 Maiden Lane systems and/or the scheduling of Owner personnel. The Contractor shall produce these materials and equipment a minimum of five (5) working days in advance of the aforementioned shutdown work.

Add the following Subparagraph 3.3.19:

The Contractor shall provide all temporary scaffolding, sidewalk sheds, bridges, hoists, derricks, ladders, barriers at open shafts, and other devices for protection of the workers and the public; and other similar items. The Contractor shall provide temporary dust-tight partitions and protective barriers in the Main Building, EROC and/or 33 Maiden Lane to completely enclose the area, floor, or level where alteration work, or related work is performed at any location. All such items shall comply with applicable laws and labor regulations; and shall be promptly removed from the site when their use is no longer required for execution of the work.

Add the following Subparagraph 3.3.20:

Existing alternating-current electricity to be used for temporary power and temporary lighting required by the Contractor will be available for the Contractor’s use at sources designated by the Owner. The Contractor will be required to provide, install and maintain temporary wiring and outlets required by the job, from the sources made available to the points of use; and such wiring shall conform to requirements of all governing electrical codes and regulations. The Owner will furnish electrical energy used by the Contractor at no cost to the Contractor; however, care shall be exercised so as not to waste electricity and not to overload electric circuits and panels. All costs associated with the maintenance of full time temporary light and power, including any stand-by personnel, shall be included in the GMP proposal.

Add the following new Subparagraph 3.3.21:

Details of how and when the various parts of the Work shall be delivered to the Main Building, EROC and/or 33 Maiden Lane and performed at the Main Building, EROC and/or 33 Maiden Lane shall be worked out by the Contractor, and mutually agreed upon by the Owner, Contractor and the Architect prior to commencement of work to the extent practicable, and while the Work is being performed. The Owner or the delegated representative in each case shall be given adequate notice by the Contractor before actual work in any part of the Main Building, EROC and/or 33 Maiden Lane is started.

CM: _____ Bank: _____

Date: _____ Date: _____

Add the following new Subparagraph 3.3.22:

Where the staging (phasing) of a project is such that certain mechanical, electrical or other systems will be put in operation for beneficial use by the Owner prior to completion of the entire project; and where such condition requires the use of standby personnel, the cost for such personnel shall be included in the contract amount to provide for operation of the systems twenty-four (24) hours per day and seven (7) days per week.

Add the following new Subparagraph 3.3.23:

The Contractor before commencing work, shall verify all governing dimensions and other conditions at the premises, including any obstacles, and shall examine all adjoining work on which their work is in any way dependent. The Contractor shall not be relieved of responsibility for defective work arising out of defective adjoining work unless notice of such defective work has been filed by the Contractor and acceded to in writing by the Architect before any part of the Work in question is commenced. Requests for additional payments at a later date due to any “unforeseen” conditions which could be observed at the site will not be allowed.

3.4 Labor and Materials

Add the following Subparagraph 3.4.3 to 3.4:

3.4.3 Substitutions:

3.4.3.1 The materials, products and equipment described in the Contract Documents establish the standard of required quality, function, dimension appearance, durability, performance and manufacturer’s warranty, technical resources and engineering support, as determined by the Architect.

3.4.3.2 Substitution requests, except where delineated as a “no substitution” item in the Contract Documents, will be considered only if standards are met or exceeded as described above and the Contractor specifically states it in the original proposal.

3.4.3.3 Each substitution request shall include the name of the material, product or equipment item for which substitution is requested and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for a complete evaluation.

3.4.3.4 A statement setting forth any changes in other materials, products, equipment or other Work that incorporation of the substitution would require, shall be included.

3.4.3.5 The burden of proof of the merit of the proposed substitution is upon the proposer.

CM: _____ Bank: _____

Date: _____ Date: _____

3.4.3.6 The Architect’s decision of approval or disapproval of a proposed substitution shall be final and will be set forth in a written addendum.

3.4.3.7 Contractor shall not rely upon approvals made in any other manner.

3.4.3.8 Contractor’s Responsibilities: If any of the following conditions occur following the acceptance by the Owner of the GMP due to substitutions, the Contractor making the substitution shall bear the cost of such conditions, including payment for services rendered by the Architect:

- a) Redesign required for any portion of the Work;
- b) Materials or quantity changes for any portion of the Work;
and
- c) Delays in any portion of the Work.

3.5 Warranty

Add the following to the end of Subparagraph 3.5.1:

The Owner’s enforcement of any warranty or guarantee given by the Contractor shall not deprive the Owner of any other rights or remedies the Owner may otherwise have.

3.6 Taxes

Delete Subparagraph 3.6.1 in its entirety and substitute the following:

3.6.1 The Contractor understands and agrees that, in view of the Owner’s exemption from state and local taxes, unless otherwise directed and approved by the Owner in writing, all supplies, materials, and equipment to become integral component parts of each Project shall be purchased by the Contractor, the Subcontractor or Sub-subcontractors, as the case may be, in such a manner that there will be neither local nor New York State and/or New Jersey sales or compensating use taxes incurred in respect of supplies, materials and equipment purchased to become integral component parts of each Project. Payment for such supplies, materials and equipment shall be made in accordance with the provisions of this Contract.

3.6.2 In the event the Contractor cannot purchase supplies materials or equipment to become integral component parts of each Project and obtain delivery therefor without payment of a sales or use tax, Contractor shall notify the Owner immediately and shall not make any such purchase without prior written approval of the Owner in each instance.

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3.7 Permits, Fees and Notices

Delete Subparagraphs 3.7.1, 3.7.2, 3.7.3, and 3.7.4 and substitute the following:

3.7.1 The Contractor shall make any application or give any notice to any local or state governmental body or agency therefor for any permit, approval, or license required under applicable law or regulation in connection with the Work and provide prior written notification to the Owner in each instance.

3.7.2 The Contractor shall inform the Owner, in advance, of each notice or report to be given or posted or permit, approval or license to be obtained, in order to comply with all applicable laws and regulations relating to the performance of the Work. If the Contractor performs any Work contrary to such applicable laws and regulations, then the Contractor shall assume full responsibility therefore, shall commence any necessary correction of Work promptly after notification by the Owner, shall complete such corrective work as soon as is consistent with good workmanship and shall hold the Owner harmless against any loss as a result of the performance of Work contrary to applicable laws and regulations.

3.7.3 All recommendations of the National Fire Protection Association and the National Board of Fire Underwriters to the extent applicable to the work under the contract are hereby made a part of the specifications and the Contractor shall be responsible for compliance with their provisions.

3.9 Superintendent

Add the words “Project Manager and” to the title of Section 3.9

Add the words “Project Manager and” before the word superintendent in line 1 of Subparagraph 3.9.1.

Add the words “Project Manager and” before the word superintendent in line 3 of Subparagraph 3.9.1.

Add the words “Project Manager and” before the word superintendent in line 5 of Subparagraph 3.9.1.

3.10 Contractor’s Construction Schedules

Delete the first sentence of Subparagraph 3.10.1 in its entirety and replace with:

The Contractor shall use the agreed upon schedule approved by the Owner and Architect defined as the approved schedule in the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor (AIA

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Document A121/CMc and Document 565, 1991 Edition), dated _____ between the Construction Manager and the Bank, inclusive of its rider; and this “General Conditions of the Contract for Construction,” AIA Document A201, Fourteenth Edition, 1987, inclusive of its rider.

3.11 Documents and Samples at the Site

Add the words “Changes in Work” before the word “Change” in line 3 of Subparagraph 3.11.1.

Add the following Subparagraph 3.11.2:

The Contractor shall permit the Owner, or an auditor appointed by the Owner, to have access at all reasonable times to all records, correspondence, account books, invoices, payrolls, and other records relating to the Contract, to the premises and to the construction work for the purpose of checking the cost of work, ascertaining the progress, and inspecting the character of the Work. For these purposes the Contractor shall preserve all records for a period of six (6) years after the final payment.

3.12 Shop Drawings, Product Data and Samples

Add the following to the end of Subparagraph 3.12.5:

No claim for extra cost or for extension of Contract time will be granted to the Contractor by reason of the Contractor’s or his subcontractor’s failure to submit shop drawings and/or samples in sufficient time.

Add the following Subparagraph 3.12.7.1:

Shop Drawings submitted for the Architect’s review shall be numbered consecutively and, insofar as tractable, shall be uniform in size. Drawings shall indicate all necessary dimensions pertaining to construction and erection; including manufacturer’s recommended clearances for access and maintenance of all equipment; arrangement and sectional views; complete details including relationship and connection with adjoining work or other trades; kind of materials, thickness, and finish. Should manufacturers recommended clearances not be indicated on shop drawings and proper clearances not provided in the complete installation, the Contractor shall modify installed work to provide proper access and clearance at no additional increase to the GMP.

Add the following Subparagraph 3.12.7.2:

Prior to submittal, the Contractor shall thoroughly check Shop Drawings of his subcontractors for accuracy, to see that work contiguous with and having bearing on work shown on the Shop Drawings is accurately and clearly shown and that the indicated work complies with the contract requirements. Shop drawings shall be checked by the

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Contractor against actual field conditions, including dimensions of existing conditions, prior to submittal. Shop drawings found to be inaccurate or in error by the Contractor shall be returned to his subcontractor for correction before submittal to the Architect. Shop Drawings shall bear evidence in the form of a review stamp bearing the date and the reviewer's name or initials that such drawings have been checked by the Contractor for conformance with the requirements stated above; and his approval noted thereon.

Insert the following to Subparagraph 3.12.8 at the end of sentence in line 7:

If no specific mention is made by the Contractor of additional cost requirements at the time the Shop Drawings are submitted, requests for additional costs for the item(s) covered by the Shop Drawings will not be considered at a later date.

Delete Subparagraph 3.12.11 in its entirety.

Add a new Subparagraph 3.12.12:

One reproducible transparency and two blue and white print copies shall be submitted of each Shop Drawing until final review is obtained. Each Shop Drawing shall have a clear space large enough for Architect's review stamp. Shop Drawings submitted without reproducible transparency will be returned without being reviewed.

1. After completion of checking, the Architect will obtain a print or prints of each transparency for his records and return the transparency to the Contractor.
2. Of the Shop Drawings returned "Resubmit," "Make Corrections Noted," "Submit Specified Item," or "Rejected," the original drawing shall be corrected, a new transparency and two prints made and resubmitted until final review is obtained.
3. Of Shop Drawings returned "No Exception Taken," the Contractor shall obtain and distribute such number of prints as required for field distribution to all trades performing work adjoining or related to the work or item represented by the Shop Drawings. A copy of all final reviewed Shop Drawings shall be kept at the site by the Contractor, available at all times for examination by the Owner and the Architect and turned over to the Owner in final system turnover packages.

Add a new Subparagraph 3.12.13:

Eight (8) copies shall be submitted of manufacturers descriptive data including catalogue sheets for materials, equipment and fixtures, showing sizes, dimensions, performance characteristics, and capabilities, wiring diagrams and controls, schedules, and other

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pertinent information as required. Where printed data describe more than one product or model, the product and all features which are to be furnished shall be clearly identified. Two copies of submissions, stamped either "No Exception Taken," "Make Corrections Noted," "Resubmit," "Submit Specified Item," or "Rejected," will be returned to the Contractor after being reviewed. Eight (8) copies of items requiring resubmittal shall be submitted with the required corrections.

Upon completion of the Work, the Contractor shall provide the Owner with three sets of digital files on CD-ROM disks of the final versions of the above. The cost of digitizing the files and preparation of the CD-ROMs may be included in the Subcontract Costs.

Add a new Subparagraph 3.12.14:

When Shop Drawings indicate changes which may be acceptable, and such changes affect other related work or the work of other trades, the Contractor shall assume the responsibility and cost of all such related changes and/or charges at no additional increase to the GMP.

Add a new Subparagraph 3.12.15:

During progress of the work the Contractor shall keep a careful record of all changes and corrections from layouts shown in the Contract Drawing, in the installation of equipment, ducts, supply and return outlets, piping, electric conduit, boxes and outlets, circuit panels and other mechanical or electrical service items.

Add a new Subparagraph 3.12.16:

Soon after commencement of work at the Owner's premises, the Architect will furnish to the Contractor, at the Contractor's expense, one set of the Contract Drawings on sepia transparencies or other reproducible media, and one set of computer diskettes containing digital files of the pertinent construction documents. These prints and computer files shall be kept at the site in the custody of an authorized representative of the Construction Manager, unless otherwise directed. On these prints and computer files all changes and revisions to the installations as shown shall be recorded by the Contractor as they occur. Upon completion of the Work, the Contractor shall revise the digital drawing files on the computer disks to reflect all "As Built" conditions, identify the computer files as "As Built" and forward them to the Architect, along with two plots of all the completed "As Built" drawings, for review. No final Certificate for payment will be issued, no retention reduced for the Trade involved, until such files have been received and determined to be satisfactory by the Architect and accurately show the "As Built" conditions. The costs associated with submission of "As Built" drawings may be included in Subcontract Costs, however, it will be the responsibility of the Contractor to see that all "As Built" drawings are completed to the satisfaction of the Architect. If any of the Subcontractors fail to meet any of the requirements of this section, the Construction Manager shall bear all costs

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associated with providing the required “As Built” drawings. The software application shall be as directed by the Owner. The Contractor shall be responsible for conveying the information in a virus-free format.

Add a new Subparagraph 3.12.17:

Where installation changes are made to conform with Instruction Sheets issued by the Architect, such changes shall not be incorporated on the black and white Record print except by note: “See Instruction Sheet No. ____.” Changes in installation from that shown on Instruction Sheets shall also be recorded on the black and white print of the Instruction Sheets.

Add a new Subparagraph 3.12.18:

“Near completion of the Work, the Architect will furnish the Contractor with a complete set of contract drawings on reproducible prints, photographic process “MYLAR WASHOFF, RIGHT READING,” the cost of which shall be paid for by the Contractor. All corrections noted on prints referred to above are to be drawn legibly on the mylar film and delivered to the Architect. Final Certificate for payment will not be issued; nor will retention be reduced for the TRADE involved, until such reproducibles and two sets of black line prints ON COPY-TUFF (NO TEAR) DOUBLE MATT 4 MIL WHITE OPAQUE HIGH CONTRAST FILM and one set of CD-ROMS, in a format acceptable to the Owner with all changes indicated, have been received by and determined to be satisfactory by the Architect. Costs for all prints and CDs shall be paid for by the contractor.

3.13 Use of Sites

Add the following subparagraphs:

3.13.2 The Contractor shall coordinate all of the Contractor’s operations with, and secure approval from the Owner before using any portion of the Site.

3.13.3 The Contractor agrees to assume any expense or loss without additional increase to the GMP that the Owner may incur by being deprived of any use of each Project or portion thereof by reason of any Work which is defective, or other than that specified, or does not perform the function for which it was designed, and will reimburse Owner for any expense in connection with any damage done to any property by reason of any of said causes, or by reason of the removal and replacement of Work done by the Contractor, the Subcontractors, the Sub-subcontractors or the Suppliers.

3.13.4 As a basis of the Contract, all work at the Owner’s premises shall be performed within normal working days and hours of the various building trades employed for work under the Contract, except for any disruptive work and shut-downs or as otherwise

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required by Contract Documents or for deliveries required to be made on over-time. The Owner must approve any work not within normal days and hours but such approval will not be unreasonably withheld. The Owner shall not pay the Contractor for the cost of any overtime work unless such overtime work has been expressly authorized by the Owner in writing. If the Owner has so authorized the Contractor to perform such overtime work, the Owner shall pay the Contractor, in addition to the amounts it would otherwise hereunder have paid the Contractor for such work, the cost of such overtime work.

3.13.5 Where the Contractor is required to make deliveries of structural steel, air conditioning units, fans, or any other large item; and where such deliveries are required to be delivered on weekends or after regular hours due to local law or traffic requirements; or where deliveries are required to be made on overtime for any reason whatever, all costs for such overtime shall be included in the GMP.

3.13.6 The Contractor shall perform the Work in a manner which will minimize shutdowns of existing operating items or systems. This includes items or systems on standby, *i.e.*, UPS or Emergency power system. When performance of the Work requires the shutdown of any existing operating item or system, the Contractor shall submit to the Owner, no later than four weeks from the date of this Contract, a detailed listing of these required shutdowns, which shall include a complete description of the work, the trades involved, the expected duration of the shutdowns, and the time frame in which the Contractor would like to perform this work. After receipt of the complete shutdown list and as dates for system shutdowns become available, the Owner will forward to the Contractor dates on which the shutdown work may be performed. Such shutdowns shall take place only when the Contractor has obtained prior written authorization for the shutdown from the Owner, has confirmed the schedule of this shutdown in writing at least five working days in advance of the work, and meets all requirements of Article 3.3.17 as amended. All shutdowns including, but not limited to, those required for or by the Work of Heating, Ventilating and Air Conditioning, Plumbing, Electric, or other Systems, shall be performed on overtime, including testing of Work installed or altered by any trade. All shutdowns, tie-ins, tests, etc. shall be in conformance with the Owner's Building rules and regulations. The costs for all such overtime shall be included in the GMP.

Add the following to the end of Subparagraph 3.14.1.

This includes any cutting, removing, patching, and/or replacing of existing systems, slabs, floors, walls, ceilings, finished surfaces, conduits, ducts, piping, cables etc. Patching and replacement of any of the above shall match existing construction and finishes in all respects, as judged by the Architect, and all systems shall be restored to their original function without impairment and to their original quality.

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3.16 Access to Work

Delete Subparagraph 3.16.1 and replace with the following:

The Owner, the Architect, and the representative of either of them shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access so the Architect and Owner may perform their functions under the Contract Documents.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT

4.1 Architect

Add the following at the end of Subparagraph 4.1.1:

For each Project subject to this Agreement, the term “Architect” shall have the person or entity identified in the Program and Schedule Notice.

Delete Subparagraph 4.1.2 and replace with the following:

4.1.2 The Architect has the authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise provided by written notice from the Owner to the Architect and the Contractor. All of the Owner’s instructions to the Contractor shall be issued through the Architect unless the Owner determines otherwise.

Delete Subparagraph 4.1.4 in its entirety.

4.2 Architect’s Administration of the Contract

Insert the following sentence before word “However,” in line 6 of Subparagraph 4.2.2:

The Architect is required to provide site services as defined in the Standard Form of Agreement between Owner and Architect (AIA Document B141, 1987 Edition), inclusive of its rider, which had been entered into by the Bank and the Architect for the relevant project.

Add the words “, Change in Work” after the word “Orders” in line 1 of Subparagraph 4.2.8.

4.3 Claims and Disputes

In Subparagraph 4.3.2, lines 5 and 11, insert the words “as provided for in Subparagraph 4.5” in between the words “arbitration” and “or.”

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In Subparagraph 4.3.4, line 2, insert the words “as provided for in Subparagraph 4.5” in between the words “arbitration” and “unless.”

4.4 Resolution of Claims and Disputes

In Subparagraph 4.4.4, line 6, delete the words “but subject to arbitration” and replace with the words “unless subject to arbitration as provided for in Subparagraph 4.5.”

4.5 Arbitration

Delete Subparagraph 4.5.1 in its entirety and replace with the following:

At the exclusive option of the Owner, all claims, disputes and other matters in question between the parties to this Contract, arising out of or relating to this Contract or the breach thereof not resolved under Paragraph 4.4, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties agree otherwise. Any and all arbitration arising out of or relating to this Contract shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Contract to the extent necessary to the final resolution of the matter in controversy. This Contract to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Contract shall be specifically enforceable under the prevailing arbitration law.

In Subparagraph 4.5.2, delete the phrase “Rules and” from the title, delete the first sentence in its entirety and add the following to the end thereof:

Any demand for arbitration made by any party other than the Owner shall not be binding on the Owner. Any demand for arbitration made by the Owner shall be binding on the Owner.

Delete Subparagraph 4.5.5 in its entirety.

Add a new Subparagraph 4.5.8:

4.5.8 Location of Dispute Resolution. At the Owner’s option, the exclusive location for settlement of any and all claims, controversies or disputes arising out of or related to this Contract or any breach thereof whether by arbitration or litigation shall be New York, New York.

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ARTICLE 7. CHANGES IN THE WORK

Add the following to the end of Subparagraph 7.1.3:

At the request of the Architect, the Contractor shall promptly prepare and submit, to the Architect, a cost estimate for any changes or proposed Changes in the Work and any contract time adjustment required by this change. This estimate shall include an itemized listing of quantities and cost associated with the Changes in the Work and shall be limited to those elements listed in Articles 7.3.6.1, 7.3.6.2, 7.3.6.3, 7.3.6.4, as amended. All costs associated with Changes in the Work shall be adjusted as part of the Change Order. No adjustments to the Contract Sum pertaining to that specific change will be made after a Change Order has been executed.

In the last line of Subparagraph 7.1.4 delete “or Contractor.”

Add the following Subparagraph 7.1.5:

Any substitutions for specified materials, equipment, or systems proposed by or through the Contractor shall be effected only upon approval and authorization by the Owner and Architect through the issuance of a Change Order. Upon such issuance, the substitution shall become part of the Contract Documents as if specifically incorporated therein by the Architect or its consultants.

7.2 Change Orders

Add the following to the end of subparagraph 7.2.1.3:

Any adjustment in time resulting from a change shall be included in the Change Order pertaining to that specific change. Claims for adjustment in time due to a change will not be considered after the Change Order for such change has been approved. Change order requests must be submitted in a pre-approved format to the Engineer with copies to the Bank. The CM shall not proceed with any Change Orders prior to written approval by the Engineer and the Bank. The CM shall include detailed material and labor breakdowns for each trade included in the Change Order. Any work started without approval by the Engineer and Bank shall be completely removed at no additional increase to the GMP. All Change Order requests shall reflect any impact to the Project schedule. The CM shall maintain a Change Order log that is updated weekly and issued prior to the Project meeting.

In subparagraph 7.2.2 insert in the second line between the words “Sum” and “may” the words “shall be by cost proposal or”

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Add the following Subparagraph 7.2.3:

Cost proposals shall contain sufficient information concerning quantities, materials, prices, labor and similar pertinent data in a sufficiently detailed format to permit intelligent evaluation by Architect and Owner. Where cost proposals include work by Subcontractors, the detailed information pertaining to the work including the Subcontractor's total cost for his part of the work, shall be submitted by each Subcontractor involved. The information submitted by Subcontractors shall be contained on an estimating sheet, in a letter or other appropriate form, which shall be imprinted with the name, address and telephone number of the Subcontractor submitting the quotation. All such pertinent "back-up" information shall accompany all of the Contractor's cost proposals.

7.3 Construction Change Directives

Delete Subparagraph 7.3.6.5 and add the following Subparagraphs after Subparagraph 7.3.6.4:

.5 MARKUP ON ADDITIONAL WORK

Subcontractors and Subordinate Subcontractors shall be limited to, and agree to perform, any additional work which may be ordered in accordance with the General Conditions of the Contract for the net cost of materials and labor (including wages paid, Payroll Taxes, Worker's Compensation and all of the insurance) plus the following percentage of this amount for all their overhead and profit:

- a) _____ percent (%) on additional work and supervision performed by the direct forces of the Subcontractor in question.
 - b) _____ percent (%) on work performed by a trade contractor or supplier subordinate to the Subcontractor in question.
- .6 The percentage to be added for any work change involving both added work and omitted work shall be applied to the net difference in cost.
 - .7 The percentage fees as indicated herein shall also apply to Subparagraph 7.3.3.
 - .8 Nothing in this Article shall excuse the Contractor from proceeding with the extra Work as directed by the Owner.

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ARTICLE 8. TIME

8.2 Progress and Completion

Add a new Subparagraph 8.2.2.1:

Meetings shall be held periodically as requested by the Architect, at a designated place in the Main Building, EROC and/or 33 Maiden Lane at which time representatives of the Contractor shall be present to discuss all details relative to the progress of the Work. The Contractor shall arrange for and conduct these meetings, shall record the proceedings, and shall furnish one (1) typed copy of the minutes of such meetings to the Owner and Architect.

Add a new Subparagraph 8.2.3.1:

Should the work not proceed according to the established detailed Project schedule, the Owner reserves the right to direct the Contractor to provide extra manpower or overtime at no additional increase to the GMP.

ARTICLE 9. PAYMENTS AND COMPLETION

9.3 Applications for Payment

In Subparagraph 9.3.1, line 1, delete “ten” and insert in its place “fifteen.”

Add the following to the end of Subparagraph 9.3.1:

Each item listed in the application for payment shall have a separate amount for labor and a separate amount for material and other costs.

Add the following Clause 9.3.1.3 to 9.3.1:

9.3.1.3 Until the Work is certified by the Architect to be substantially completed, the Owner shall pay ninety percent (90%) of the amount due the Contractor on account of progress payments which shall include amounts of any approved Change Orders. When the work under the contract has been substantially completed, and certified by the Architect, the Owner may pay to the Contractor such additional amount on account of the Work as shall be necessary to bring the aggregate of all payments made by the Owner to the Contractor to an amount equal to ninety-five percent (95%) of the Contract Sum. The Owner may reinstate or alter retention at any time and at any percentage. The Owner may make payment, at its discretion, for each Application for Payment in the form of separate checks for the Contractor and for each of the Subcontractors in the amount shown for those trades in the application, and as certified payable by the Architect’s Certificate for Payment.

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Checks for Subcontractors shall be made payable jointly to the Contractor and the Subcontractor. All such checks shall be given to the Contractor for his distribution to the Subcontractors.

Delete Subparagraph 9.3.3 and replace with the following:

The Contractor represents and warrants that title to all Work, including, without limitation, supplies, materials and equipment, whether incorporated in each Project or not, will pass to the Owner upon delivery to the Site, free and clear of all chattel mortgages, conditional sales agreements, security interests, financing statements and any other liens, claims, or encumbrances, all of which are hereafter referred to in this Article 9 as a "lien" or "liens"; and that no Work, including without limitation, supplies, materials or equipment will be acquired subject to any lien or liens.

In Subparagraph 9.7.1, line 6, delete "or awarded by arbitration."

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

Delete Subparagraphs 10.1.2, 10.1.3 and 10.1.4 in their entirety and insert the following subparagraphs:

10.1.2 In the event that Contractor encounters asbestos unexpectedly, Contractor agrees that it has full responsibility to protect and to have provided for the safety of his personnel and personnel in the area through adequate precaution, preventative measures and training and shall indemnify Owner, Architect and their employees and agents against any claim, damage, loss or expense (including attorney's fees) attributable to bodily injury, sickness, disease or death resulting from contact with or work in the vicinity of asbestos.

10.1.3 In the event Contractor does encounter asbestos unexpectedly, Contractor shall give prompt written notice to the Owner and Architect and proceed to limit exposure therefrom by, at the option of the Owner, enclosing, containing or encapsulating said asbestos containing material in accord with all applicable industry standards of care and in compliance with all applicable municipal, county, state and Federal laws or regulations. Contractor shall not suspend Work in areas which are appropriately sealed off from the one where the asbestos has been discovered. Contractor shall provide Owner with an estimate of the costs for any additional work resulting from encountering asbestos and Contractor and Owner shall mutually agree on the appropriate compensation for Contractor.

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10.2 Safety of Persons and Property

Add the following Clause 10.2.1.4 to subparagraph 10.2.1:

10.2.1.4 The work of the Owner or other separate contractors.

Add the following Subparagraph 10.2.8 to 10.2:

10.2.8 Any special precautions for fire protection necessary for the execution of a Contractor's Work shall be the responsibility of the Contractor requiring same and the cost of such precautions shall be paid for by that Contractor. The Contractor is in no way relieved of its responsibility to abide by the Occupational Safety Health Act (OSHA) regulations and for recording and registering accidents by the reporting of accidents to the Owner and the Architect.

ARTICLE 11. INSURANCE AND BONDS

Delete Paragraph 11.1 entirely and substitute:

11.1 The Contractor shall purchase and maintain, as primary Insurance, minimum limits of Insurance as set forth below to protect itself from claims arising out of or resulting from the Contractor's operations under the Contract, whether such operations are undertaken by the Contractor, any Subcontractors, and/or by any person and/or entity for which any of the foregoing may be liable:

- 1) Claims under workers compensation, disability benefits, and other similar employee benefit acts;
- 2) Claims for damages for bodily injury, occupational sickness or disease, or the death of any employee of the Contractor, and/or any Subcontractors;
- 3) Claims for damages for of bodily injury, occupational sickness or disease, or the death of any person other than an employee of the Contractor or Subcontractor;
- 4) Claims for damages for Personal and Advertising injury which are:
 - (a) Sustained by any person as a result of an occurrence directly or indirectly related to the employment of such person by the Contractor, and/or,
 - (b) Sustained by any other person.

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- 5) Claims for damage to the Work, including loss of use, and including the cost to remove, replace, or restore the Work, which arise from injury to or destruction of tangible property, or arise from the inadequate installation of, or provision of, or defects in, the Work;
- 6) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and/or
- 7) Claims for damages because of bodily injury or death of any person or because of property damage arising out of any motor vehicle, machinery or equipment.

Insurance Definitions

“Advertising Injury” – An injury arising from advertising activities, employee publications and all other oral, written, televised, videotaped, electrically transmitted or any otherwise disseminated materials, for: Libel, slander, defamation, or disparagement; Violation of right of privacy; Misappropriation of ideas; Infringement of copyright, trademark, title, or slogan; or Unfair competition.

“Bodily Injury” – The definition of bodily injury is to include physical injury, sickness, disease, death, mental injury, emotional anguish, shock or humiliation.

“Occurrence” - An event, or continuous or repeated exposure to conditions, which cause injury during the Policy period. All such exposure to substantially the same general conditions at or emanating from the insured location or insured project shall be deemed one “occurrence.”

“Personal Injury” – Injury sustained as a result of wrongful eviction, false arrest, detention or imprisonment, malicious prosecution, libel, slander or defamation, invasion of privacy, wrongful entry or dismissal, or discrimination.

“Property Damage” – All risk of physical loss of or damage to real and personal property, including the loss of use thereof.

Workers’ Compensation and Employer’s Liability Insurance as required by all applicable local, state and/or federal laws, and including a Voluntary Employers Liability Rider. All certificates of insurance must specifically note that the statutory provisions of the state or district where the Work is located apply. The Employer’s Liability Insurance shall be written for no less than the following limits, or for an unlimited amount if allowable by the appropriate state of jurisdiction:

- (a) Bodily Injury by Accident - \$1,000,000 Each Accident
- (b) Bodily Injury by Disease - \$1,000,000 Policy Limit
- (c) Bodily Injury by Disease - \$1,000,000 Each Employee

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Comprehensive General Liability Insurance (broad form), written on an “occurrence” basis, including a per-project/per-location amendment to the general aggregate limit. Such policy shall provide cover for Bodily Injury and Property Damage, and for Personal & Advertising injury:

- (a) Minimum Limits of Liability:
 - (i) Bodily Injury and Property Damage Per Occurrence Combined
Single Limit: \$1,000,000
 - (ii) General Aggregate: \$2,000,000
 - (iii) Products and Completed Operations Per Occurrence and
Aggregate: \$2,000,000
 - (iv) Personal & Advertising Injury: \$1,000,000
 - (v) Medical Payments: \$10,000
- (b) The Comprehensive General Liability Policy shall provide insurance for the Contractor for Bodily Injury (including mental anguish and emotional distress) to third parties, Personal Injury to third parties, and Property Damage to third parties’ property, other than to the Work, arising out of or resulting from:
 - (i) Operations of the Contractor or it’s employees, called “Premises Operations;”
 - (ii) Work performed by any of the Subcontractors, called “Sublet Work” or “Independent Contractors;”
 - (iii) Broad Form Contractor’s Liability, called “Hold Harmless Clauses” or “Indemnity Agreements;” and
 - (iv) Products Liability and Completed Operations Insurance covering claims arising from the work during the duration of the project and for a period of two years after the completion of the project.
- (c) Such policy shall contain no restriction on work operations involving underground structures, piping, utilities, sewers, excavating, sheeting, shoring and/or similar constructed improvements.
- (d) Such policy shall contain no restriction on claims arising from property damage caused by explosion and/or collapse of or damage to underground structures, piping, utilities, sewers, excavating, sheeting, shoring, and/or similar constructed improvements.

CM: _____ Bank: _____

Date: _____ Date: _____

The Contractor’s insurance required under this paragraph shall be written for no less than any limits of liability as herein specified, or as required by law, whichever is greater, by a company or companies licensed to do business in the State of New York, and/or in the district where the Work is located. Such companies shall have a minimum “A-” or better policyholder’s rating, and a “Class XI” or better financial rating as listed in the most current edition of the A.M. Best Insurance Guide available on the date of the execution of the Contract.”

Comprehensive Automobile Liability insurance, providing coverage for Bodily Injury and Property Damage for claims arising from the operation, use, and/or loading and unloading of any motor vehicle:

- (a) Limit of Liability - \$1,000,000.
- (b) The policy shall contain no exclusion for liability assumed under contract.

Excess or Umbrella Liability Insurance in an amount not less than \$25,000,000 following the forms and amounts of primary General Liability, Automobile, and Workers’ Compensation and Employers Liability Insurance as described in Subparagraph A hereof.

If required by the Owner for a Project, the CM will obtain and the Owner will reimburse the cost for Contractor’s Pollution Legal Liability Insurance, with limits not less than \$2,000,000 per loss with a \$5,000,000 aggregate to provide coverage for any environmental claims incurred in connection with the Contract, and occurring on or away from the premises. Policy shall include coverage for both third party pollution liability and remediation. Policy shall include Bank as a Named Insured and shall include cover for completed operations for a two (2) year period beyond the completion of the contract.

If required by the Owner for a Project, the CM will obtain and the Owner will reimburse the cost for Errors and Omissions coverage with limits no less than \$5,000,000 per occurrence and \$5,000,000 any aggregate, providing coverage for loss or damage resulting from Contractor’s professional errors and omissions or wrongful acts committed in the course of advising on any and all environmental matters; and/or wrongful acts committed in the course of rendering, or failing to render, professional services, such as architectural, engineering, surveying, or other such services, which are undertaken in connection with the Contract.

Unless specifically excepted by the Bank, Builder’s Risk Insurance providing coverage to all supplies, materials, and equipment, required for the Work, until such supplies, materials, or equipment is installed and accepted by the Bank.

All of the insurance coverage described in this Article maintained by the Contractor shall provide that:

- (1) The Bank shall be included in the policy as Additional Insured, as its interest may appear, with the understanding that any obligation imposed upon the insured

CM: _____ Bank: _____

Date: _____ Date: _____

parties, including, but not limited to, the liability to pay premiums, shall be the sole obligations of the Contractor and not the Bank.

- (2) Contractor and its Subcontractors expressly waive all rights of subrogation, set-off, and counterclaim against the Bank for damages payable by Insurance obtained pursuant to this Agreement or any insurance coverage's applicable to the work. The policies of insurance required to be carried by Contractor and all Subcontractors shall provide such Waivers of Subrogation by endorsement or policy language.
- (3) The Contractor's insurance policies shall be endorsed so as to indicate that its policies provide primary and non-contributory coverage for all claims of any type or nature against the Bank, arising out of or resulting from the provision of the Work by the Contractor, and/or any Subcontractors. Any other valid and collectable insurance which includes the Bank as Named Insured shall in no instance be considered as primary, co-insurance, or contributing insurance. (The Contractor's policy may allow the Subcontractor's policy to provide primary cover in the event of a claim arising from the Subcontractor's negligence.) These policies shall further be endorsed to allow Cross-Claim and Severability of Interest Endorsements for claims due to the actions and/or inaction of the Contractor and/or any Subcontractor.
- (4) All losses shall be payable without restriction on the nature of the Work, the occupation of the Contractor or use of the Work and/or the site, or portion(s) thereof.

The Contractor shall require each of the Subcontractors to procure and maintain Insurance coverage with Terms and Conditions equal to or exceeding those specified above. Such coverage shall remain in effect until the approved completion of such Subcontractor's portion of the Work, and for an extended period, as specified above, for exposure arising from the completed operations. The Contractor shall be solely responsible for ensuring that each such Subcontractor complies with all of the insurance requirements hereunder. The Contractor is further charged with monitoring each Subcontractor's compliance with this provision.

A Certificate of Insurance signed by the insurance carrier or the carrier's authorized agent stating the limits of the liability and the expiration date of each coverage, and warranting the Contractor's compliance with the above specified provisions shall be delivered to the Bank prior to the commencement of the Work. Additionally, such carrier or such authorized agent shall provide a warranty statement that the insurance requirements under this Article have been fully met **and are covered under such certificate**. Should the initial insurance policy expire prior to the final completion of the Work, a renewal certificate and additional warranty statement shall be furnished to the Bank not later than 30 days prior to such expiration date. All certificates shall contain a provision that coverage shall not be canceled, materially amended, or allowed to expire without at least sixty (60) day prior written notice to the Bank.

CM: _____ Bank: _____

Date: _____ Date: _____

The Contractor shall, at all times through final completion of the Work, carry and maintain, at the Contractor's sole expense, full replacement cost coverages for damages to or loss of the Contractor's assets, including tools, equipment, material, and facilities required for his provision of the Work.

The Owner shall continue to occupy or use a portion or portions of the Work prior to Substantial Completion thereof. The Contractor shall insure that the insurance company or companies providing the property insurance have consented to this occupancy and use by endorsement to the policy or policies. The insurance shall not be canceled or lapsed on account of such partial occupancy or use.

Compliance by the Contractor with the insurance requirements set forth in this Article shall not relieve the Contractor of any liability arising from any indemnity or other such agreement as set forth in the contract documents, nor shall the Contractor's liability, be limited by the amount of any applicable insurance.

If the General Liability coverages are provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2 of AIA A201.

11.3 Property Insurance

Delete Paragraph 11.3 entirely.

Add the following Paragraph 11.5 to Article 11:

11.5 Other Insurance

11.5.1 The Owner shall not be obligated to procure or maintain any form of fire (property), liability, or other insurance.

11.5.2 The Contractor shall furnish a Performance Bond and Labor/Material Bonds covering the faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum.

11.5.2.1 The Contractor shall deliver the required Bonds to the Owner not later than three (3) days following the date the Contract is entered into.

11.5.2.2 The attorney-in-fact who executes the required Bonds on behalf of the Surety shall affix thereto a certified and current copy of the power of attorney.

CM: _____ Bank: _____

Date: _____ Date: _____

ARTICLE 12. UNCOVERING AND CORRECTION OF WORK

12.2 Correction of Work

Add the following to the end of Subparagraph 12.2.2:

If, in the judgement of the Owner, any material, equipment or systems require corrective work because of defects in material or workmanship within the one (1) year warranty period or extended warranty periods, the Contractor shall complete all required corrective work within forty-five (45) days of notice. If the Contractor does not in accordance with the terms and provisions of the Contract, complete all corrective work within forty-five (45) days, or comply with and fulfill his warranty obligations, the Owner will notify the bonding company to have such work and/or obligations performed at no additional increase to the GMP. The obligations of the Contractor under the terms and provisions of the Contract, shall not, however, be limited to the surety retained by the Owner pursuant to the provisions of the Contract.

ARTICLE 13. MISCELLANEOUS PROVISIONS

13.1 Governing Law

Delete Paragraph 13.1.1 entirely and substitute:

This Contract and the rights and obligations under this Contract shall be governed by and construed in accordance with the Federal law of the United States of America and, in the absence of controlling Federal law, in accordance with the law of the State of New York, notwithstanding New York’s choice of law rules.

Delete Paragraph 13.3.1 entirely and substitute:

Any notice or other communication required or permitted to be given or delivered under this Contract shall be in writing and shall be sufficiently given if delivered personally, which shall be required with regard to notices applicable to a material breach, or sent by telegram or cable, or mailed by first-class or overnight delivery mail, return receipt requested, postage prepaid, as follows:

To Owner:

Federal Reserve Bank of New York
33 Liberty Street
New York, N.Y. 10045
Attn: Mr. Richard Prisco, REGS Officer

CM: _____ Bank: _____

Date: _____ Date: _____

To Contractor:

or to such other address or addresses as either party may from time to time designate to the other by written notice. Any notice shall be deemed to be given when received.

ARTICLE 14. TERMINATION OR SUSPENSION OF THE CONTRACT

Add the following new Subparagraph 14.4:

Article 14.4. Owner’s Unrestricted Right to Terminate

14.4 Notwithstanding anything in this Contract to the contrary, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate this Contract at any time at its sole discretion, with or without cause, without liability of any kind. In such event, the Owner shall only be obligated to, pay the Construction Manager any Cost of Construction Manager’s Services for services rendered prior to that time. Further, the Owner may assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions of the Construction Manager’s Services to another Construction Manager acceptable to the Owner.

Add the following new Articles:

ARTICLE 15. RECORDS OF THE CONTRACTOR

15.1 Maintenance of Records

15.1.1 The Contractor shall maintain written records and computerized records, in a fashion acceptable to the Owner, of all communications with the Architect and the Owner and make the same available for inspection by the Owner at all times. The Contractor shall maintain and keep, for a period of at least six (6) years after the date of Final Acceptance, all records and other data relating to the Work. The Owner or the Owner’s representative shall have the right to inspect and audit all records and other data of the Contractor relating to the Work.

CM: _____ Bank: _____

Date: _____ Date: _____

ARTICLE 16. DAVIS-BACON ACT

16.1 Davis-Bacon Act

16.1.1 The Contractor and all Subcontractors shall be required to pay all laborers and mechanics employed or working upon the site of the Work the full amount of wage and fringe benefits due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor applicable to the class of work performed at the site of the Work. Although the Reserve Banks have taken the position that they are not legally subject to the Davis-Bacon Act and the implementing regulations, (40 U.S.C. § 276a et seq. and 29 CFR Part 5) this action is taken in recognition of the policy of the Act. The Contractor and all Subcontractors may not rely on the position of the Bank as a defense for noncompliance with the wage requirements of the Davis-Bacon Act.

ARTICLE 17. SMALL AND DISADVANTAGED BUSINESSES

17.1 Small and Disadvantaged Businesses

To the extent consistent with the U.S. Court Decision in Adarand Constructors v. Pena, Owner has a policy of assisting small businesses and disadvantaged small business in participating in the performance of Owner's contracts. Contractor hereby agrees to carry out this policy in the awarding of subcontracts connected with this Contract to the fullest extent consistent with the efficient performance of this Contract. Contractor further agrees to furnish to Owner information demonstrating Contractor's compliance with this clause, upon request by Owner.

As used in this Contract, the term "small business" means a business qualifying as a small business concern under Article 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term "disadvantaged small business" means small business--

- (1) At least 51 percent (51%) owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent (51%) of the stock of the business is owned by one or more socially disadvantaged individuals; and
- (2) whose management and daily business operations are controlled by one or more such individuals. Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and any other minorities, or any other individual found to be disadvantaged by the Small Administration pursuant to Article 8(a) of the Small Business Act.

CM: _____ Bank: _____

Date: _____ Date: _____

Contractor, acting in good faith, may rely on written representations by its subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

ARTICLE 18. EQUAL OPPORTUNITY

18.1 Contractor Will Not Discriminate

In the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. The Contractor shall, in all solicitations or advertisement for employees placed by him or on his behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, disability or national origin.

ARTICLE 19. FORCE MAJEURE

19.1 Force Majeure

Neither party shall be liable for its failure or delay in performance of its obligations under this Contract due to strikes, wars, revolutions, fires, floods, explosions, earthquakes, statutes or government regulations, or other causes beyond its control.

ARTICLE 20. JURISDICTION

20.1 Jurisdiction

The exclusive jurisdiction for any legal action or proceeding arising under this Contract shall be the United States District Court for the Southern District of New York, and the parties expressly submit to the jurisdiction of that court.

ARTICLE 21. SEVERABILITY

21.1 Severability

If any provision of this Contract is held invalid, illegal, or unenforceable, the remainder of this Contract shall not be affected thereby. If any portion of this Contract is held by a court of competent jurisdiction to conflict with any Federal, State, or local law or regulation, such portion of this Contract is hereby declared to be of such force and effect as is permissible in such jurisdiction.

CM: _____ Bank: _____

Date: _____ Date: _____

ARTICLE 22. CONFIDENTIALITY

22.1 No Disclosure of Owner Information

Contractor acknowledges that any information regarding the Owner, including but not limited to, its operation, business practices, or security procedures obtained by Contractor, its agents or employees while performing the Agreement are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner's prior written consent.

ARTICLE 23. RIGHT OF ENTRY

23.1 Contractor's Conditional Right of Entry

Any person or persons designated by Contractor but subject to the reasonable approval of the Owner shall have the right to enter the premises of the Owner during the Owner's business hours and upon notice to the Owner or any other reasonable time agreed to by the Owner and subject to the Owner's reasonable security arrangements. A reasonable, security-related denial or restriction of access by Owner either for security reasons shall not constitute a breach of this Contract or affect Owner's rights or Contractor's obligations. Owner may conduct security investigations relating to Contractor personnel having access to Owner's facilities similar to investigations conducted with respect to Owner's own employees. Owner may require substitution of Contractor agents, employees and representatives for reasons relating to Owner security. It is understood that the person(s) designated by Contractor to have access to the Owner's premises will be Contractor's personnel, unless the Owner is notified and agrees to the contrary. The Contractor shall also indemnify the Bank for any penalties assessed against the Bank by the Immigration and Nationalization Service with regard to the knowing hiring of unauthorized workers, as well as any legal fees incurred by the Bank in defense of a related investigation by any branch of the United States Government.

ARTICLE 24. ADVERTISING

24.1 Contractor Shall Not Advertise Owner's Name

Contractor shall not use the Owner's name or any adaptation or variation of the Owner's name in any advertising, promotional material, or other publication, or otherwise publicize or communicate Contractor's relationship with the Owner, without the Owner's prior written consent.

CM: _____ Bank: _____

Date: _____ Date: _____

ARTICLE 25. BACKGROUND INVESTIGATIONS

25.1 Background Investigations

Because of the sensitive and confidential information about the Bank’s business affairs, operation and security procedures which the Construction Manager may be given or have access to during the term of this Agreement, the Bank will conduct background investigations of the Construction Manager at the Construction Manager’s expense. In the Bank's sole discretion, the Bank may conduct more than one such background investigation during the term of this Agreement and such investigations may include, but not be limited to, researching the Construction Manager’s ownership, business history and record of ethical conduct. If (i) the Construction Manager fails to promptly cooperate with any such background investigations or (ii) the Bank determines, in its sole discretion, that the results of any background investigation are not satisfactory to the Bank, the Bank may, at its sole option, terminate this Agreement immediately and without any liability on behalf of the Bank, other than to pay the Construction Manager of any services that have been properly rendered under this Agreement as of the date of termination. In the event the Bank terminates this Agreement in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Construction Manager of the specific results of the background check or why the Bank deemed those results unsatisfactory.

IN WITNESS WHEREOF, the parties have duly executed this Contract on the dates set forth below:

AGREED:

AGREED:

FEDERAL RESERVE BANK OF NEW YORK

[SIGNATURE]

[SIGNATURE]

[PRINT NAME]

[PRINT NAME]

[TITLE]

[TITLE]

[DATE]

[DATE]

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

May 31, 2006

Structure Tone, Inc.
770 Broadway
New York, N.Y. 10003-9522

Attention: Mr. Ronal Pennella

Re: Request for Proposals
Construction Management Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Dear Mr. Pennella,

Enclosed please find a copy of the Request for Proposals in connection with the above-referenced project.

Sincerely,



Richard Prisco
Assistant Vice President

enclosure

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

May 31, 2006

Turner Construction Company
375 Hudson Street
New York, N.Y. 10014

Attention: Mr. John Thomann

Re: Request for Proposals - STATE HOUSE
Construction Management Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Dear Mr. Thomann,

Enclosed please find a copy of the Request for Proposals in connection with the above-referenced project.

Sincerely,



Richard Prisco
Assistant Vice President

enclosure

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

May 31, 2006

Plaza Construction Corporation
260 Madison Avenue
New York, N.Y. 10016

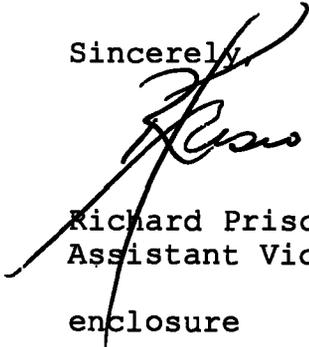
Attention: Mr. Timothy Heaney

Re: Request for Proposals
Construction Management Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Dear Mr. Heaney,

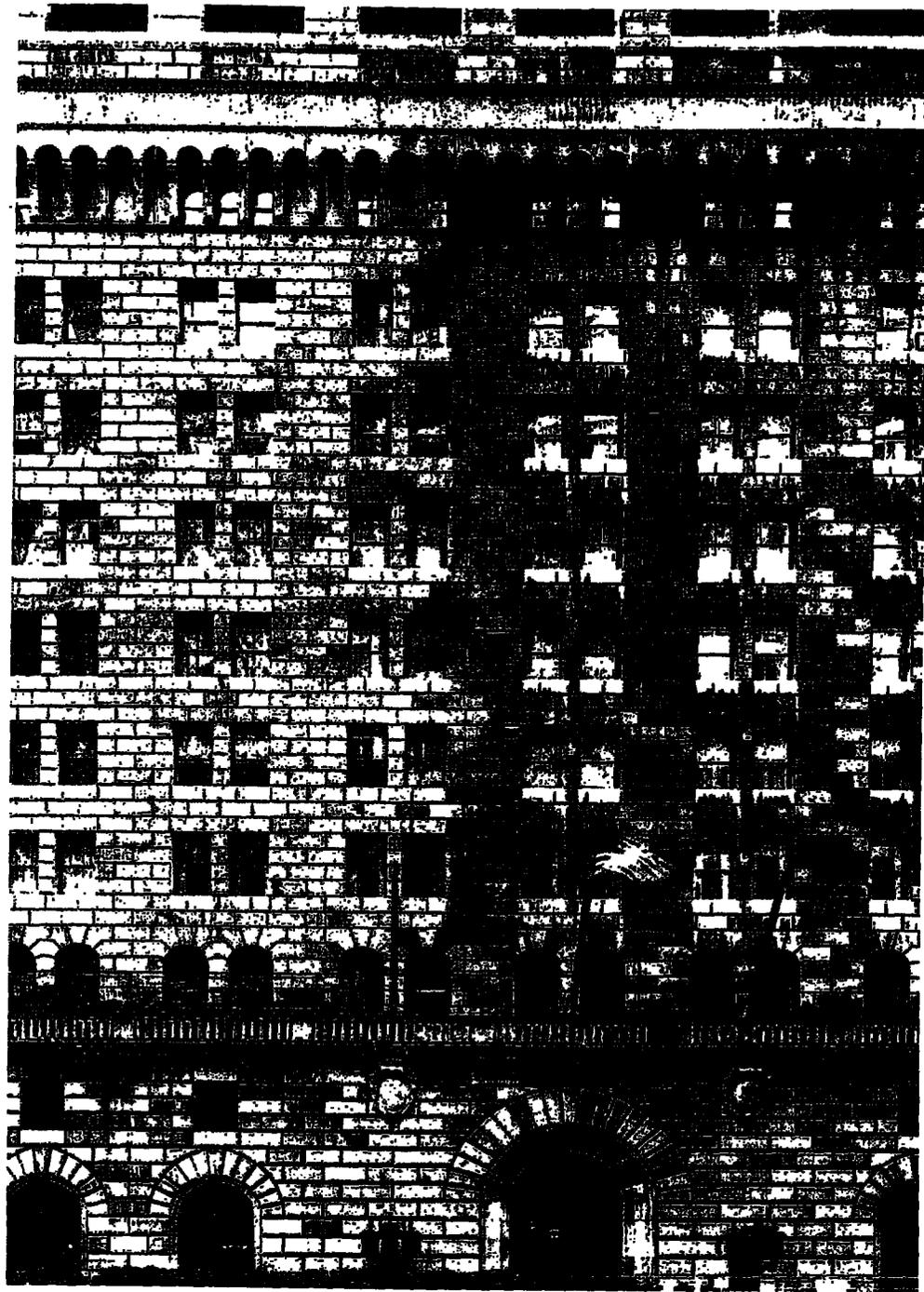
Enclosed please find a copy of the Request for Proposals in connection with the above-referenced project.

Sincerely,



Richard Prisco
Assistant Vice President

enclosure



**Federal Reserve Bank of New York
Request for Proposals
Construction Management Services**

**Restoration/Renovation of the Main Building's
10th and 11th Floors
April 26, 2006**

**FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS ("RFP")
FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR
RESTORATION/RENOVATION OF THE MAIN BUILDING'S 10TH
AND 11TH FLOORS**

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**FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS
FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR
RESTORATION/RENOVATION OF THE MAIN BUILDING'S 10TH
AND 11TH FLOORS**

Introduction

The Federal Reserve Bank of New York (the "Bank") requests proposals for construction management services in connection with the restoration/renovation of the 10th and 11th floors (the "Project") at the Bank's Main Building, located at 33 Liberty Street, New York, New York (the "Main Building"). This request for proposals ("RFP") is intended as a summary guide to provide an overview and describe in general terms the requirements of the Construction Manager ("CM") for all aspects of the Project. Sections 1, 2, and 3 of this RFP (the "RFP Text") are not intended to and do not completely detail all of the requirements of the CM. The CM shall carefully review the contract, attached hereto as Attachment B (the "Contract") which is incorporated into and made a part of this RFP, and the RFP Text to determine all the requirements of the CM and shall base the proposal submitted to the Bank on the requirements of the Contract and RFP Text. Each Offeror shall submit with their formal proposal for furnishing construction management services to the Bank, a letter stating that both the Contract and the RFP Text have been reviewed and that their proposal is based on the requirements of both of these documents.

The attached Contract includes, but is not limited to, "The Standard Form of Agreement Between the Owner and the Construction Manager where the Construction Manager is also the Constructor," AIA Document A121/CMc, 1987 Edition and AGC Document 565, 1991 Edition as it has been amended by the Contract Rider generated by the Bank for this Project (as amended, "AIA A121/CMc"). The Contract also includes, for the construction phase services of the Project, the "General Conditions of the Contract for Construction," AIA Document A201, 1987 Edition, as it has been amended for this Project by the Supplementary Conditions generated by the Bank (as amended, "AIA A201").

The RFP Text and Contract details the requirements and lists the factors that will be considered in selecting one of the Offerors, specifies contract clauses required by the Bank, and outlines a required response format as Attachment A (the "Proposal Format"). To be responsive, proposals should include all the information specified in the Proposal Format.

The CM, in addition to acting as an advisor to the Owner during the design period, will assume all financial responsibility for the construction of the Project. The CM shall also act as the overall project coordinator during construction, which will entail coordinating all aspects of the construction, inclusive of any activities required by the Bank and the Bank's vendors and consultants, and any other activity required by any party for the successful and timely completion of the Project.

All services provided by and work performed by the CM shall be subject to, and comply with, all applicable provisions of Main Building rules and regulations ("Attachment C").

1. CONSTRUCTION MANAGEMENT SERVICES

1.1 Existing Environment

A. Design

The Main Building was designed by Philip Sawyer of the noted firm York and Sawyer, and was completed in 1924, with an addition at the east end of the building that defined its current footprint in 1936. The Main Building has fifteen (15) floors above grade and four (4) below grade. On the 10th floor, there is a twelve (12) foot deep setback. Except for the 14th and 15th floors, the floors above the setback are approximately 35,000 usable square feet, including the core. To facilitate delivery of any large mechanical equipment into the sub-grade levels, two (2) removable slabs were installed in the trucking area.

The Bank has in its possession most of the original construction documents.

The 10th floor currently houses the Bank's executive offices and the boardroom, an almost stand-alone structure perched at the south east corner of the space. It also includes the Officers' Dining Room ("ODR"), a two (2) story high space approximately thirty-one (31) feet wide by seventy-five (75) feet long, used primarily for executive dining functions. The east-west reception corridor ("Reception Corridor") is the floor's main thoroughfare. At the east end, there are two (2) suites occupied by the Bank's President and First Vice President, while most of the south side of the floor is allocated to the offices of the Executive Vice Presidents. The latter are served by a private corridor parallel to the Reception Corridor. The walls of the Reception Corridor are decorated with paintings on loan from the Metropolitan Museum of Art. At the east section, there is a coin and currency exhibit and several glass cases displaying memorabilia related to the original construction project.

At the northwest quadrant of the floor, there are three (3) conference rooms, including a teleconferencing facility, and a serving pantry supported by a kitchen located on the 11th floor. Toilet facilities located on the north side of the core consist of two (2) public rooms and one (1) private room. The men's room has two (2) shower stalls.

The setback roof is accessible from most spaces, although configuration of operable sections of the windows is not ideally suited for that purpose. During the warm weather months, open air dining sessions are held twice a week.

The original appearance of the 10th floor was consistent with the requirements of the program of the architectural competition sponsored by the Bank's directors. Those emphasized avoidance of the appearance of extravagance so commonly associated with bank buildings of the time, as one of the main goals. This is reflected in the austere design of the Reception Corridor, which remains in its original condition to the present day.

The appearance of the spaces added in 1936, including the boardroom and ante room (i.e., waiting room/common hallway) are more elaborate, with decorative carved wood paneling and embossed metal ceilings.

The 10th floor has a significant amount of decorative metalwork by the noted craftsman Samuel Yellin, including elevator lobby gates, chandeliers and grilles. Most likely, all of those were installed as a part of the original construction.

The boardroom, ante room (i.e., waiting room/common hallway) and several east end offices have a total of seven (7) fireplaces served by a single duct forced exhaust system. In addition, the ODR has one (1) natural draft fireplace.

To date, the following significant renovations were performed on the 10th floor:

- | | |
|------|--|
| 1936 | East end added; |
| 1942 | In connection with installation of a HVAC system, ODR's original under pitched plaster vault ceiling was replaced with a flat one; |
| 1972 | ODR's ceiling was replaced again, fabric wall covering introduced, a stand-alone chiller installed on the 13 th floor; |
| 1984 | Toilets reconfigured; |
| 1995 | Telecommunications risers added in the space made available by removal of two (2) elevator cars; |
| 1997 | The floor was surveyed by Ehrenkrantz Eckstut and Kuhn Architects ("EEK"). The report of examination described in detail the condition of individual spaces; |
| 1998 | New toilet partitions installed; and |
| 1998 | EEK prepared a feasibility study on the subject of the replacement of the ODR ceiling. The study identified historical precedents for the design schemes. |

The 11th floor currently houses executive dining rooms, a kitchen and general office space. A significant portion of the west end is occupied by the upper portion of the 10th floor's ODR. Two (2) sets of dumb waiters connect the kitchen with the 10th floor serving pantry and the 14th floor facility.

B. Infrastructure

The existing emergency/uninterruptible power supply consists of four (4) diesel-powered generators and associated switchgear located on the E level and the uninterruptible power source batteries and associated switchgear located on the C level. In

addition, the Bank contracted with Con Edison for on-call services of a mobile Emergency Roll-Up Power Generator (“ERUG”). The ERUG service entrance is located at Liberty Street and the associated switchgear is on the E level. The Main Building’s air conditioning systems are supported by a chiller plant located on the C level. A stand-alone sixty (60) ton chiller supporting the ODR is located on the 11th floor within the kitchen.

C. On-going Construction Projects

At the present time, the Main Building is undergoing two (2) major renovation campaigns: (1) a floor-by-floor modernization; and (2) the exterior envelope rehabilitation. Typically, the floor-by-floor modernization entails removal of the entire existing fit-out from the core out and constructing an entirely new space, including new horizontal distribution of the electrical (using existing under-floor raceways) and HVAC systems, and new fan rooms. A sprinkler system and elements of the Main Building’s Class E fire alarm system are also introduced as well as new ceilings, lighting, access control systems, and communications cabling, etc. Furthermore, modification of an existing riser or installation of a new one is occasionally required to support the renovation program. Any asbestos contaminated materials (“ACM”) are abated during demolition.

To date, all floors below the 10th floor setback (E level through 9th floor) and the 12th floor have been completed. With the exception of the 3rd, 9th and 12th floors, all renovated office occupancy floors have a generally uniform appearance.

The exterior envelope rehabilitation campaign includes restoration of the exterior masonry and rehabilitation of the Main Building’s roofs.

In addition, there is an ongoing elevator modernization project, which among other improvements will introduce a new pantry elevator connecting the 10th, 11th and 14th floors.

1.1.A. The Project

The Project will entail complete renovation of the 10th and 11th floors, consistent with the standard floor-by-floor approach, as outlined above.

It is the Bank’s desire that the design of the renovated 10th floor be respectful of Philip Sawyer’s vision for the original construction and it should preserve, where appropriate, the historic fabric of the floor and at the same time, reflect the Bank’s commitment to embrace change. It should also allude to the elements of the Bank’s leadership model, such as Innovation, Communication, Delegation and Feedback. The appearance of new furniture and furnishings should be a part of the overall design.

In practical terms, the renovated floor should provide the highest level of comfort. Related deficiencies of the existing fit-out include, but are not limited to, long travel distance to the toilet facilities, lack of coordinated food service facilities to support executive dining, lack of a visitor reception center, insufficient conference space and inadequate teleconferencing infrastructure.

In terms of the mechanical, electrical, plumbing and life safety systems, the design should reflect the need to minimize the risk of any interruptions to the occupancy caused by a building systems failure. To that end, it is currently envisioned that the 10th floor will be supported by several fan rooms located on the 11th floor. The stand-alone sixty (60) ton chiller presently located on the 11th floor will be replaced with a new unit, which is proposed to be incorporated into the existing plant located on the D level.

Incorporation of state-of-the art audio-video, telecommunications and security equipment are planned.

The renovated 11th floor shall include a kitchen with lockers and toilet rooms, general office space laid out consistent with the building standards, new toilets, and several mechanical rooms. The new kitchen is currently envisioned as combining the main kitchen located on the 14th floor and the existing executive dining kitchen located on the 11th floor. New executive dining facilities will be required on the 10th and 11th floors.

The appearance of the executive portion of the 11th floor should be consistent with that of the 10th floor, while the appearance of the general office space should be consistent with that of a typical renovated office floor.

The design of both floors should meet all the applicable codes, including, but not limited to, the Americans with Disabilities Act.

Preliminary floor layouts are included; however, the Offerors are advised that significant revisions will be required.

It is expected that for the duration of the construction, the occupants of the 10th floor will move to a temporary space that will be built (under a separate contract) on the 13th floor. At the same time, executive dining will move to the 1st floor's Liberty Room.

To minimize inconvenience, overall construction time shall not exceed twelve (12) months.

The three (3) potential Offerors receiving this RFP are:

1. Plaza Construction Corporation;
2. Structure Tone, Inc.; and
3. Turner Construction Company

1.2 Scope of Services

The successful Offeror shall perform construction management services listed in AIA A121/CMc. The Project involves renovation of approximately 70,000 usable square feet of office space, including, but not limited to:

- Demolition of the existing fit-out on 11th floor and selected areas of the 10th floor, and abatement of the ACM's;
- Installation of new partitions, ceilings and flooring;
- Installation of new wall finishes;
- Installation of new millwork;
- Installation of new bathrooms and associated plumbing;
- Rehabilitation of the historic fabric of the 10th floor, including wood paneling, masonry and ironwork;
- Installation of three (3) new windows;
- Re-glazing of existing windows as required;
- Installation of several new fan rooms, ductwork and associated equipment, including a stand-alone chiller (located on the D level) and building management systems tie-ins;
- Installation of new sprinkler and Class E fire alarm systems;
- Installation of a new electrical distribution system;
- Installation of new telecommunications distribution systems;
- Installation of new audio-visual equipment; and
- Installation of new food service equipment.

The Offerors are advised that the 9th and 12th floors are presently occupied and the Bank will require that utmost care be taken to minimize disturbance to the occupants.

The Bank expects to select the architect for the Project in the 2nd quarter of 2006.

For the purpose of this RFP, the Offerors shall assume that the pre-construction phase services shall commence on June 1, 2006 and end on January 31, 2007, and the construction phase services shall commence on March 1, 2007 and end on February 28, 2008.

1.3 Mandatory Requirements

To be considered responsive, a proposal must satisfy the mandatory requirements identified in this section and in other respects be responsive to the requirements of this RFP:

1. The Offeror shall be a General Construction/Construction Management firm conducting business in the State of New York for no less than ten (10) years with demonstrated experience in interior construction.
2. Pre-Construction Phase Services:

The complete extent of the Pre-Construction Phase Services are indicated in the Contract including, but not limited to, those services described below and in Article 2, Sections 2.1 through 2.2.10 of the AIA A121/CMc document:

- a. Development of a preliminary project budget/schedule including trade breakdown; updated at architect's sixty-five percent (65%) construction document phase;
 - b. Development of pre-bid packages for long-lead items (if required);
 - c. Preparation of an approved subcontractor list;
 - d. Attendance at weekly project meetings;
 - e. Review of construction documents for constructability;
 - f. Preparation of the phasing plan;
 - g. Value engineering; and
 - h. Submission of the Guaranteed Maximum Price to the Bank.
3. Construction Phase Services:

The required Construction Phase Services shall include, but not limited to, those services indicated in Article 2, Sections 2.3 through 2.5 in the AIA A121/CMc and throughout the entire AIA A201 document as they are amended by the Bank. The Offeror shall base its proposal to the Bank on both the requirements of the Contract and the RFP Text.

1.4 Alternative Proposals

Offerors may submit alternative proposals based on differing specifications if:

- (1) all differences from the specifications in this RFP are clearly defined and the alternative proposal adheres to the format specified by this RFP;
- (2) the Offeror submits a base proposal complying with the specifications of this RFP; and

- (3) the alternative proposal is received at the same time that the base proposal is received.

The Bank reserves the right not to accept any alternative proposals submitted.

2. Administration of the RFP Process

2.1 Schedule of Events

The following schedule of events shall govern this RFP:

<u>Event</u>	<u>Date</u>
Offerors give written notice to the Bank of intent to respond	June 6, 2006
Deadline for receipt of questions	June 12, 2006
Proposals due (2:00 p.m.)	June 14, 2006
Date of selection of vendor (approximate)	June 22, 2006

The Bank reserves the right, in its sole discretion, to extend the time schedule, as necessary. Offerors will be notified of any change in the schedule.

2.2 Questions Concerning this RFP

It is the Offeror's responsibility to seek clarification of any inconsistencies, ambiguities, errors, or other issues regarding this RFP that the Offeror does not fully understand. The Bank may respond orally to questions that, in the Bank's view, are about insignificant matters that affect only a single Offeror. Responses to questions that may affect Offerors other than the inquirer, however, will be in writing and distributed to all Offerors.

Substantive questions about the RFP should be submitted in writing to:

Joseph Oszacki, Senior Facilities Engineer
 Federal Reserve Bank of New York
 Real Estate and General Services Function
 33 Liberty Street
 New York, NY 10045
 Telephone: (212) 720-5812
 Facsimile: (212) 720-1510
 E-mail: joseph.oszacki@ny.frb.org

Questions should be submitted by the time specified in Section 2.1 of this RFP. No other discussion or communication between an Offeror and an employee or officer of the Bank is permitted and no information gained from any such communication may be considered a binding communication of the Bank.

2.3 Intent to Respond

Each Offeror must submit, by the date specified in Section 2.1 of this RFP, a written statement indicating whether the Offeror intends to submit a proposal responding to this RFP. Submit the statement to the address specified above for submission of questions. The Bank, in its sole discretion, may refuse to consider a proposal submitted by an Offeror who did not submit a timely statement of intent.

2.4 Submission of Proposals

Each Offeror must submit three (3) copies of its proposal sent via certified mail to the address specified above for submission of questions or hand delivered to:

Mr. Richard Prisco, Assistant Vice President
Federal Reserve Bank of New York
Real Estate and General Services Function
33 Liberty Street
New York, NY 10045

to be received no later than 2:00 p.m. on the date specified in Section 2.1 of this RFP.

Proposals received after the exact time for submission will not be considered for award unless the Bank determines that the late receipt was due solely to mishandling by the Bank after receipt at the Bank. The only acceptable evidence of the time of receipt is the time/date stamp of the Bank on the proposal envelope or other documentary evidence of receipt maintained by the Bank.

Each copy of the proposal must be properly executed and any alterations formally explained and initialed by the Offeror. All three (3) copies must be submitted in a sealed envelope within a sealed envelope. The inner envelope must be clearly labeled "Proposal for Construction Management Services for Restoration/Renovation of the Main Building's 10th and 11th Floors, DO NOT OPEN." Proposals will not be opened prior to the deadline specified for receipt.

An Offeror, by submitting a proposal, represents that:

- The Offeror has closely examined both the entire Contract and the RFP Text and fully understands both documents;
- The proposal is based upon the requirements described in the Contract and the RFP Text;
- All terms and conditions set forth in the Contract and RFP Text, including all Appendices have been reviewed and understood by the Offeror;
- The Contract, Attachments, Exhibits and Addenda are accepted and incorporated in the proposal unless the proposal explicitly takes exception to them; and

- The Contract, Attachments, Exhibits and Addenda are accepted and incorporated in the proposal unless the proposal explicitly takes exception to them; and
- The Offeror possesses the technical capabilities, equipment, financial resources, and personnel to provide construction management services.

Because the Bank may select a proposal or reject all proposals without further discussions with Offerors, Offerors should present their proposals initially in the most favorable possible terms from both a technical and price viewpoint.

2.5 Amendment or Withdrawal of this RFP

Corrections or clarifications to this RFP will be issued in the form of written Addenda to this RFP and will be sent by certified or registered mail to all Offerors who have indicated an intent to submit a proposal. Receipt of all Addenda should be acknowledged in the proposal. If an Offeror fails to acknowledge receipt of any Addenda, their proposal will nevertheless be construed as though the Addenda had been received and acknowledged. No interpretation, correction, clarification, or amendments to this RFP made by other than written Addenda will be binding on the Bank.

Offerors may modify or withdraw their proposals up to the deadline for submission but not after that time. Proposals may not be withdrawn for one hundred fifty (150) days following the deadline for submission.

2.6 Selection of an Offeror

Upon selection of an Offeror, the Bank will notify all Offerors of the selection. The Bank will indicate in general terms the reason why unsuccessful proposals were not accepted.

Selection of an Offeror does not create a contract between the Bank and the selected Offeror. The Bank will negotiate a contract with the successful Offeror, which must include the terms specified in Attachment B to this RFP. An Offeror should specify in its proposal any particular amendments it would propose to the terms stated in Attachment B. **BECAUSE CONTRACT TERMS ARE A PART OF THE EVALUATION PROCESS, THE ONLY CONTRACT CHANGES WHICH THE SUCCESSFUL OFFEROR WILL BE PERMITTED TO PROPOSE AFTER THE AWARD IS MADE ARE THOSE SPECIFICALLY STATED IN DETAIL IN ITS PROPOSAL.** If an agreement acceptable to the Bank is not reached within thirty (30) days of Offeror selection, the Bank reserves the right to disqualify the selected Offeror and re-evaluate the remaining proposals.

The final contract is contingent upon approval by the senior management of the Bank and the concurrence of the Board of Governors of the Federal Reserve System. Absence of such approval or concurrence, any award or contract may be canceled without liability on the part of the Bank.

2.7 Determination of Responsibility

The Bank will only select an Offeror that is deemed responsible, in the sole discretion of the Bank. The Bank makes its determination of responsibility based on the following factors, judged as of the time of Offeror's selection and the date specified for the start of contract performance:

- a. the availability of adequate financial resources to perform the contract;
- b. ability to comply with all required or proposed performance schedules, taking into consideration all existing business commitments;
- c. record of satisfactory performance with any entity of the Federal Reserve System or other entities;
- d. satisfactory record of integrity and business ethics;
- e. necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- f. necessary professional personnel, technical equipment and facilities, professional licenses, and operating authority and insurance coverage or the ability to obtain them; and
- g. other qualifications necessary for eligibility to receive an award under applicable laws and regulations.

Where, in the sole judgment of the Bank, a substantial portion of the contract is to be performed by a subcontractor, the Bank will make a similar determination about the responsibility of the subcontractor. The Offeror, of course, remains responsible for the performance of the subcontractor.

A proposal should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent financial statements, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission. The financial statements provided by the Offeror should be audited. If unaudited financial statements are provided, the Bank may conclude that the Offeror is not responsible, even if the financial statements appear to show financial strength. The Offeror should also include other information that it believes demonstrates that the Offeror is responsible. The burden is upon the Offeror to clearly demonstrate that it is responsible. The Bank reserves the right to require such additional information concerning the Offeror's responsibility as the Bank deems necessary.

Because of the sensitive and confidential information about the Bank's business affairs, operations, and security procedures which Offerors may be given or have access to during the bidding process, the Bank will conduct background investigations, at Offeror expense, on all Offerors and their companies. Such investigations may include, but

may not be limited to, researching a company's history/ownership and fingerprinting and drug testing of Offeror personnel who will have access to the Bank's premises, as more fully described in Attachment D. In the Bank's sole discretion, no award of a contract will be made to, or if an award has already been made, such award may be withdrawn from, any Offeror: (i) that fails to promptly cooperate to the Bank's satisfaction with any background investigations; or (ii) whose background investigation by the Bank produces results that are not, in the Bank's sole determination, satisfactory to the Bank. In the event the Bank fails to make an award to an Offeror or withdraws an award from an Offeror in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Offeror of the specific results of the background check or why the Bank deemed those results unsatisfactory.

2.8 Confidential Information

If the Bank receives a request for information from an Offeror regarding the successful proposal, the Bank may disclose bottom-line amounts of an individual Offeror and other information from a proposal to other Offerors or to members of the public after a proposal has been selected. In deciding on disclosure, the Bank will consider whether the Offeror has requested confidentiality and whether disclosure of the information would likely result in substantial competitive harm to the Offeror. If an Offeror wishes to request confidential treatment of certain information, the request must be in writing and submitted with the proposal or amendment containing the information. The request must discuss in detail the justification for the confidential treatment of each item of information for which confidential treatment is requested. This justification must demonstrate that harm would result from the public release of the commercial or financial information; simply stating that the information would result in competitive harm is not sufficient. The Offeror must also state whether the information is available to the public from another source. Information for which confidential treatment is requested must be:

- a. specifically identified in the nonconfidential portion of the proposal or amendment (by reference to the confidential portion);
- b. separately bound; and
- c. labeled CONFIDENTIAL.

2.9 Reservation of Rights

The issuance of this RFP and the Bank's receipt of any information or proposals shall not, in any manner, obligate the Bank to perform any act or otherwise incur any liabilities. The Bank assumes no obligation to reimburse or otherwise compensate any Offeror or recipient of this RFP for losses or expenses incurred in connection with this RFP. The Bank shall have the right to use, for any purpose, any information submitted in connection with this RFP.

The Bank reserves the right to: (1) withdraw this RFP at any time prior to the execution of a contract; (2) decide not to award a contract to any Offeror; (3) reject a proposal or award the contract without inviting the Offeror to submit a new proposal; (4)

negotiate with any source considered qualified; (5) request, orally or in writing, clarification of or additional information concerning proposals that are considered competitive; (6) waive minor informalities or irregularities, or any requirement of this RFP; (7) accept any proposal in part or in total; (8) select a proposal other than the low cost proposal; and (9) reject a proposal that does not conform to the specified format or the other requirements of this RFP.

Prior to any award, the Bank may require the Offeror to submit or identify in writing price data bearing on the reasonableness of the offer. The Bank reserves the right to have its authorized representatives inspect the facilities and examine any books, documents, papers, records, or other data of the supplier that pertain to and involve transactions relating to the proposal, for the purpose of evaluating the accuracy, completeness, and currency of data supplied.

2.10 Small and Disadvantaged Small Businesses

The Bank has a policy of encouraging acquisitions from small businesses and socially and economically disadvantaged small businesses (a "Covered Company"). The term "small business" means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and regulations thereunder. The term "socially and economically disadvantaged small business" has the same meaning as defined in Section 8(a) of the Small Business Act (15 U.S.C. § 637(a)). Socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. If an Offeror believes that it is a Covered Company, it should submit the reasons for this conclusion with its proposal.

Under the Bank's policy, the Bank gives preference to a proposal from a Covered Company: a responsive proposal from a responsible Covered Company may be preferred over an otherwise comparable proposal even if the proposal from the Covered Company is marginally more costly. The Bank's contract with the contractor will also require that the contractor follow the Bank's policy on Covered Companies in awarding any subcontracts.

2.11 Service Contract Act

Under the Service Contract Act of 1965 (41 U.S.C. § 351 et seq. (the "Act")) and the regulations promulgated under the Act (29 C.F.R. Part 4) wages and fringe benefits paid to service employees employed by the Offeror in performing the contract resulting from this RFP must be not less than the minimum wage and not less than those prevailing in the area where services are performed, or, if a collective bargaining agreement covers the service employees, the wages and fringe benefits must be in accordance with the agreement. The Department of Labor determines the level of wages and fringe benefits to be paid to service employees based on the information on Standard Form 98. The selected Offeror will be required to cooperate fully with the Bank by providing any required information and taking any necessary action to obtain a wage determination or otherwise and will be required to comply with the Act, the Regulations, and any wage determination applicable to the agreement.

3. Evaluation of Proposals

3.1 Objective

The objective of the Bank in soliciting and evaluating proposals for the Project is to ensure selection of a best qualified Offeror who will provide construction management services for the Project. The result of the process will be the selection of the proposal that, in the view of the Bank, is most advantageous to the Bank and offers the optimum combination of technical ability/experience, depth of corporation, and price.

3.2 Evaluation Process

Only proposals that are received from Offerors that the Bank has determined to be responsible under Section 2.7 of this RFP will be considered for award.

All proposals of responsible Offerors will be examined to determine responsiveness to the Bank's requirements. To be considered responsive, a proposal must satisfy all the mandatory requirements and otherwise be responsive to this RFP. A proposal that is not responsive will be set aside. If, after evaluation of the remaining proposals, the Bank determines that none of the proposals are responsive, the proposals set aside, at the Bank's option, may be reexamined.

The remaining proposals will be further evaluated on the basis of the evaluation criteria in Section 3.3 of this RFP, which are listed in descending order of relative importance.

Subsequent to reviewing the proposals and as part of the evaluation, the Bank may interview one or more Offerors. If an interview is requested by the Bank, all proposed team members must be present at the interview. Also subsequent to reviewing the proposals, the Bank may ask one or more Offerors to arrange an inspection tour of their primary place of business and recently completed projects of similar profile.

The Bank has a policy of assisting Covered Companies as described in Section 2.10 of this RFP. Under that policy, preference in selecting a proposal may be given to a proposal submitted by a Covered Company. In addition, the subcontracting plan submitted with the proposal will be judged based on plans for using Covered Companies and procedures for documenting compliance with the plan.

3.3 Evaluation Criteria

Responsive proposals will be evaluated on the basis of the following nonexclusive list of criteria. Criteria categories are listed in descending order of relative importance. Where one of the criteria for determining responsibility is repeated here, in this phase of the evaluation, the criterion will be analyzed in terms of the quality with which or the extent to which the criterion is demonstrated:

- **Technical Ability/Experience** - The ability of the Offeror to furnish construction management services that assure high quality construction proven by successfully completed similar projects and a proven track record with the Bank or other Reserve Banks. The Offeror shall include an organizational chart showing names and titles of all team principals and staff assigned to the contract, including resumes for each team member.
- **Project Management Approach** – Approach to the project-specific challenges.
- **Depth of Corporation** - The ability of the Offeror to furnish the required services in a timely manner, taking into account existing commitments as indicated by availability, professional diversity and competence of staff.
- **Cost** - Estimated cost to the Bank for construction management services. Proposed fees are to be included as set forth in the Proposal Format indicated in Attachment A. Fees indicated in a format other than indicated in Attachment A may be considered unresponsive. A schedule of hourly billable rates of the Offeror shall be included.

The Owner expects that the percentages quoted for the CM's General Conditions and Fees are completely inclusive of any and all compensation required by the CM to cover all of the CM's costs associated with completion of the construction, the work and all costs associated with the CM's performance of services required by the Contract. Insurance costs are to be quoted separately.

Compensation for Pre-Construction Phase Services shall be proposed on the not-to-exceed time card basis.

- **Subcontracting Plan** - Proposals will be evaluated based on the existence of a plan by the Offeror to use Covered Companies in accordance with the Bank's policy and on the proposed procedures for documenting compliance with the plan as described in Section 3.2 of this RFP.
- **Contract Terms** - Proposals will be evaluated on the basis whether the contract terms or amendments proposed by the Offeror are significantly less advantageous to the Bank than the terms specified in the Contract. Any proposed changes to the Contract must be stated in detail in the Offeror's proposal. **Because proposed contract terms are a part of the evaluation process, the only Contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal.** Acceptance of an Offeror's proposal does not bind the Bank to accept the Contract changes proposed by that Offeror.

3.4 Interviews

Subsequent to the evaluation process, the Bank may choose to interview one or more Offerors.

ATTACHMENT A: PROPOSAL FORMAT
FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS
FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR
RESTORATION/RENOVATION OF THE MAIN BUILDING'S 10TH
AND 11TH FLOORS

This Attachment A specifies the format that should be used to prepare proposals responding to this RFP. The sole purpose of this format is to facilitate the fair and equitable evaluation of all proposals received. At its option, the Bank may consider any significant deviation from this format as non-responsive and disqualify that proposal. Extensive cross-referencing to other documents may be considered non-responsive. The topical format of all proposals should be as follows:

I. **Executive Summary**

Provide a brief narrative outlining your company's history; the professional backgrounds of key personnel, associates, and consultants; and any unique qualifications as pertaining to the Project and any information you may deem helpful to the Bank in its evaluation of your qualifications.

II. **Overview**

Provide a general overview of your approach to the Bank's goals, as outlined in this RFP.

III. **Description of Construction Management Services**

- Describe, in detail, your firm's approach to projects similar in nature and scope to those listed in Section 1.2 of this RFP;
- Describe the scope of Pre-Construction Phase Services;
- Include resumes of Offeror's project team personnel. Provide proposed staffing chart for the Project. For each individual assigned, the Offeror shall include a statement that, to the best of their knowledge, this individual will be available for the duration of the Project. Identify the individuals that would be assigned full-time to the Project. Provide additional information regarding staffing if appropriate;
- Describe how your company deals with fluctuating internal workloads and demands;

- Describe your approach to phasing and staging the Project;
- Describe your approach to the challenges brought upon by the Bank security requirements; and

The description should demonstrate how the proposal satisfies each of the mandatory requirements listed in Section 1.3 of this RFP and include a statement that the Offeror intends to comply with all other requirements of this RFP.

IV. Experience

Include description of representative projects completed by your company in the past five (5) years. For each project, indicate which of key personnel you propose to assign to the Project that was involved with each representative project and describe their responsibilities for every project.

List names, addresses and telephone numbers of individuals the Bank may address questions pertaining to each project submitted as reference.

V. Financial Background and Responsibility

The Offeror should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent audited financial statement, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission.

The Offeror should also include information to demonstrate that the Offeror is "responsible" as described in Section 2.7 of this RFP. This should include examples of similar projects successfully completed, particularly for the Bank or other Reserve Banks.

This information should include similar information about any subcontractor that will perform a substantial part of the contract.

VI. Costs

Provide your proposed fee as set forth in the following schedule.

For purposes of completing this schedule, "Subcontract Costs" shall include, but not be limited to, the costs for all labor, equipment, and materials to be manufactured, fabricated, and/or installed in order to complete the construction as shall be required by construction documents and the contract, inclusive of, but not limited to, all costs described in Paragraphs 6.1.3, 6.1.4 and 6.1.6.4 of the AIA A121/CMc, as amended.

For the Pre-Construction Phase Services and the cost of the Construction Manager's Compensation shall include, but not be limited to those services as set forth in Paragraphs 2.1 and 2.2 of the AIA 121. The fee for such services shall be proposed on a time card not-to-exceed basis.

For General Conditions and Construction Services Phase work, the Cost of the Construction Managers General Conditions shall be the CM's compensation for all costs associated with performance of the work as described in Paragraph 2.3 of the AIA 121/CMc, any costs required for the CM to complete the work or required as part of AIA A201 or to complete the construction as required by the Contract of Construction Documents, and any costs normally associated with or included in the cost for General Conditions for a General Contractor administered construction project of similar scope, inclusive of, but not limited to, all costs described in Paragraphs 6.1.1, 6.1.2, 6.1.5, 6.1.6 (excluding 6.1.6.4), 6.1.7, 6.1.8 and 6.1.9.

List Fee Schedule for the following:

Pre-Construction Phase Services	
Not to Exceed:	_____
CM General Conditions:	_____ % of the total Subcontract Cost
CM Fee	_____ % of the total Subcontract Cost
CM Insurance:	_____ % of the total Subcontract Cost

List hourly billable rates for key categories.

Identify any exclusions and/or qualifications.

VII. Contract Terms

The Offeror shall specify any contract terms proposed by the Offeror that differ from any terms specified in the Contract. Any proposed changes to the Contract must be stated here in detail. **Because contract terms are a part of the evaluation process, the only Contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal.** Acceptance of an Offeror's proposal does not bind the Bank to accept the Contract changes proposed by that Offeror.

VIII. References

The Offeror shall provide the names of at least five (5) customers using the Offeror's construction management services (preferably in the metropolitan New York area). The references shall include names, addresses, and telephone numbers of appropriate contacts.

IX. Miscellaneous

The Offeror shall include any additional information the Offeror deems useful to the Bank in evaluating the proposal. The Offeror may also request confidential treatment of information in the proposal in accordance with Section 2.8 of this RFP. If the

Offeror qualifies as a Covered Company as described in Section 2.10 of this RFP, the Offeror shall indicate that in this Section and describe the basis for the determination. The Offeror shall include its plan for using Covered Companies as subcontractors as discussed in Section 2.10 of this RFP and the procedures the Offeror will use to document compliance with the plan.

X. Execution

The proposal shall be executed by an authorized representative of the Offeror and include evidence of the authority of such a representative.

ATTACHMENT B



**Standard Form of Agreement Between Owner and
Construction Manager where the Construction Manager
is also the Constructor**

AIA Document A121/CMc and AGC Document 565 - Electronic Format

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES: CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

Portions of this document are derived from AIA Document A111, Standard Form of Agreement Between the Owner and Contractor where the Basis of Payment is the Cost of the Work Plus a Fee, copyright 1920, 1923, 1931, 1938, 1961, 1963, 1967, 1974, 1978, copyright 1987 by The American Institute of Architects; other portions are derived from AGC Document 500, Copyright 1980 by The Associated General Contractors of America. Material in this document differing from that found in AIA Document A111 and AGC Document 500 is copyrighted 1991 by The American Institute of Architects and The Associated General Contractors of America. Reproduction of that material herein or substantial quotation of its provisions without written permission of AIA and AGC violates the copyright laws of the United States and will subject the violator to legal prosecution.

AGREEMENT

made as of the day of in the year of Nineteen Ninety Seven.

(In words, indicate day, month and year)

BETWEEN the Owner:

(Name and address)

and the Construction Manager:

(Name and address)

The Project is:

(Name, address and brief description)

The Architect is:

(Name and address)

The Owner and Construction Manager agree as set forth below.

AIA DOCUMENT A121/CMC AND AGC DOCUMENT 565 - OWNER-CONSTRUCTION MANAGER AGREEMENT - 1991 EDITION - AIA - COPYRIGHT 1991 - THE AMERICAN INSTITUTE OF THE ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-3292 - AGC - COPYRIGHT 1991 - THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, 1937 E STREET, N.W., WASHINGTON, D.C., 20006-3209. WARNING: Unlicensed photocopying violates U.S. copyright laws and is subject to legal prosecution. This document was electronically produced with permission of the AIA and can be reproduced without violation until the date of expiration as noted below.

Electronic Format A121/CMc-1991

User Document: A121.DOC - 5/8/1997. AIA License Number 132674, which expires on 10/31/1997 - Page #1

Construction Manager: _____ Bank: _____

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Date: _____ Date: _____

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Construction Manager: _____ Bank: _____

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Standard Form of Agreement Between Owner and Construction Manager Where the Construction Manager is also the Constructor

ARTICLE 1 GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the Contract shall be the 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, AIA Document A201 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in AIA Document A201 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Paragraphs 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary

evaluation of the Owner's program and Project budget requirements, each in terms of the other.

2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economics.

2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Subparagraph 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction

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of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

2.1.7 LONG-LEAD TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead time items.

2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably

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inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Subparagraph 2.2.2 and other costs which are properly reimbursable as Costs of the Work but not the basis for a Change Order.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- .1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price.
- .5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

2.3.1.1 The Construction Phase shall commence on the earlier of:

(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or

(2) the Owner's first authorization to the Construction Manager to:

(a) award a subcontract, or

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- (b) undertake construction Work with the Construction Manager's own forces, or
- (c) issue a purchase order for materials or equipment required for the Work.

2.3.2 ADMINISTRATION

2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraphs 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can

discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Paragraph 3.10 of AIA Document A201, including the Owner's occupancy requirements.

2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.5 UNSAFE MATERIALS

In addition to the provisions of Paragraph 10.1 in AIA Document A201, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Construction Manager and Architect shall then proceed in the same manner described in Subparagraph 10.1.2 of AIA Document A201. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been

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rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager and Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and Architect have no reasonable objection.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The Owner, upon written request from the Construction Manager, shall furnish evidence of Project financing prior to the start of the Construction Phase and from time to time thereafter as the Construction Manager may request. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work.

3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Clauses 3.1.4.1 through 3.1.4.4, except to the extent that the Construction Manager knows of any inaccuracy:

3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

3.1.4.3 The services of geotechnical engineers when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.

3.3 ARCHITECT

The Owner shall retain an Architect to provide the Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA Document B141 current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional

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Services described in AIA Document B141 requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Paragraph 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the services described in Paragraphs 2.1 and 2.2 the Construction Manager's compensation shall be calculated as follows:

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

~~Included in the fee for Construction phase services as set forth in Article 4.1.1.~~

4.1.2 Compensation for Preconstruction Phase services shall be equitably adjusted if such services extend beyond from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

4.2 PAYMENTS

4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

4.2.2 Payments are due and payable () days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Construction Manager's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION

5.1.1 For the Construction Manager's performance of the Work as described in Paragraph 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the

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Construction Manager's Fee determined as follows:

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

% of the Cost of the Work representing Construction Manager's Fee and % representing Construction Manager's General Conditions, as same are defined in Subparagraph 5.1.16.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

Notwithstanding the above, Owner and Construction Manager agree that when subcontracts for all trades have been awarded, a Lump Sum price shall be established incorporating all subcontract costs, Construction Manager's Fee and General Conditions. Thereupon, Construction Manager shall submit to Owner a Schedule of Values itemizing the above costs, which Schedule of Values shall then be used as the basis for Construction Manager's Applications for Payments and progress payments by Owner to Construction Manager.

5.3 CHANGES IN THE WORK

5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201.

5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201 shall mean the Cost of the Work as defined in Article 6 of this Agreement and the terms "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Subparagraph 5.1.1 of this Agreement.

5.3.4 If no specific provision is made in Subparagraph 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Subparagraph 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the fee established for the original Work.

ARTICLE 6

COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

6.1.2 LABOR COSTS

- 1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

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- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)
- .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Clauses 6.1.2.1 through 6.1.2.3.

6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Clause 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager, amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- .2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.
- .3 Costs of removal of debris from the site.
- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

6.1.6 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.
(If charges for self insurance are to be included, specify the basis of reimbursement.)
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the

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Construction Manager is liable.

- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Clause 6.1.8.2.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201 or other provisions of the Contract Documents.
- .6 Data processing costs related to the Work.
- .7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.
- .9 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

6.1.7 OTHER COSTS

- .1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Subparagraph 6.1.1 which are incurred by the Construction Manager:

- .1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.3 of AIA Document A201.
- .2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.1.9 The costs described in Subparagraphs 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Paragraph 6.2.

Insert A: 6.1.10. All building charges including, but not limited to, elevator charges and utility shutdown for tie-in of services.

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Insert B: 6.1.11: Cost of an operating engineer and/or elevator constructor, if required.
 Insert C: 6.1.12: The cost of reproducing construction documents for bids, revisions and contract sets.
 Insert D: 6.1.13: The cost of carting the Owner's rubbish and debris, if applicable.
 Insert E: 6.1.14: General Conditions costs arising out of the Owner's separate contracts, if applicable.
 Insert F: 6.1.15: Filing fees and all costs related thereto if applicable.
 Insert G: 6.1.16: The Cost of Work items marked with an asterisk (*) are herein defined as "General Conditions". Owner will pay Construction Manager a sum equal to _____ (%) percent of the subcontract cost for Construction Manager's "General Conditions" costs.
 Insert H: 6.1.17: In the event that Substantial Completion is not achieved on or before The Substantial Completion date because of delays caused by any of the reasons set forth in Article 6.2.1 in A201 General Conditions, then Construction Manager shall be entitled to an equitable increase of its General Conditions as mutually determined by Owner and Construction Manager.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Clauses 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office except as specifically provided in Paragraph 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Paragraph 6.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 6.1.5.2.
- .6 Except as provided in Clause 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services.
- .8 Except as provided in Clause 6.1.7.1, any cost not specifically and expressly described in Paragraph 6.1.
- .9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Subparagraph 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

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6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

7.1.3 Provided an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than days after the Architect receives the Application for Payment.

7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of AIA Document

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A201, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3 Add the Construction Manager's Fee, less retainage of percent (%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Subparagraph 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201.

7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than percent (%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

7.2 FINAL PAYMENT

7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Subparagraph 12.2.2 of AIA Document A201, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

7.2.2 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of AIA Document A201 or other provisions of the Contract Documents.

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.3 Subtract the aggregate of previous payments made by the Owner:

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Subparagraph 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of AIA Document A201. The time periods stated in this Paragraph 7.2 supersede those stated in Subparagraph 9.4.1 of AIA Document A201.

7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Paragraph 6.1 and not excluded by Paragraph 6.2 (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

**ARTICLE 8
INSURANCE AND BONDS**

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Paragraph 11.1 of AIA Document A201. Such insurance shall be written for not less than the following limits, or greater if required by law:

8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by State and Federal laws. If (1) limits in excess of those required by statute are to be provided or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards)

- \$ Each Occurrence
- \$ General Aggregate
- \$ Personal and Advertising Injury
- \$ Products-Completed Operations Aggregate

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- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in AIA Document A201 under Paragraph 3.18.

8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:

\$ Each Accident

8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies.)

8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Paragraphs 11.2 and 11.3 of AIA Document A201. Such insurance shall be written for not less than the following limits, or greater if required by law:

8.2.1 Property Insurance:

\$ Deductible Per Occurrence

\$ Aggregate Deductible

8.2.2 Boiler and Machinery insurance with a limit of:

(If not a blanket policy, list the objects to be insured.)

\$

8.3 PERFORMANCE BOND AND PAYMENT BOND

8.3.1 The Construction Manager *(insert "shall" or "shall not")* furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to percent () of the Contract Sum.

8.3.2 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

**ARTICLE 9
MISCELLANEOUS PROVISIONS**

**9.1 DISPUTE RESOLUTION FOR THE
PRECONSTRUCTION PHASE**

9.1.1 Claims, disputes or other matters in question between the parties to this Agreement which arise prior to the commencement of the Construction Phase or which relate solely to the Preconstruction Phase services of the Construction Manager or to the Owner's obligations to the Construction Manager during the Preconstruction Phase, shall be resolved by mediation or by arbitration.

9.1.2 Any mediation conducted pursuant to this Paragraph 9.1 shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Any demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

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9.1.3 Any claim, dispute or other matter in question not resolved by mediation shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

9.1.4 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration may be made concurrently with a demand for mediation and shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

9.1.5 No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Construction Manager and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Construction Manager, a separate contractor as described in Article 6 of AIA Document A201 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner or Construction Manager or a separate contractor as described in Article 6 of AIA Document A201 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties, to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

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

9.2 DISPUTE RESOLUTION FOR THE CONSTRUCTION PHASE

9.2.1 Any other claim, dispute or other matter in question

arising out of or related to this Agreement or breach thereof shall be settled in accordance with Article 4 of AIA Document A201, except that in addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Any mediation arising under this Paragraph shall be conducted in accordance with the provisions of Subparagraphs 9.1.2 and 9.1.3.

9.3 OTHER PROVISIONS

9.3.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction.

9.3.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.3.3 OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to the Project. They are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

9.3.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

9.3.5 ASSIGNMENT

The Owner and Construction Manager respectively bind

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Date: _____ Date: _____

themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Subparagraph 14.1.1 of AIA Document A201.

10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Paragraph 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Subparagraph 4.1.1.

10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Paragraph 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Subparagraph 10.1.2, be paid an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager.
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

- .3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Clause 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of AIA Document A201.

10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Subparagraph 14.1.2 of AIA Document A201 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraphs 10.1.2 and 10.1.3 of this Agreement.

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Construction Manager: _____ Bank: _____

Date: _____ Date: _____

10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Subparagraph 14.1.2 of AIA Document A201 shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraphs 10.1.2 or 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

10.3 SUSPENSION.

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201 except that the term "cost of performance of the Contract" in that Subparagraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Subparagraphs 5.1.1 and 5.3.4 of this Agreement.

**ARTICLE 11
OTHER CONDITIONS AND SERVICES**

This Agreement entered into as of the day and year first written above.

OWNER

CONSTRUCTION MANAGER

(Signature)

(Signature)

(Printed Name and Title)

(Printed Name and Title)

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Amendment No. 1 to Agreement Between Owner and Construction Manager

Pursuant to Paragraph 2.2 of the Agreement, dated between (Owner) and (Construction Manager), for (the Project), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

ARTICLE I GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is Dollars (\$).

This Price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through F, as follows:

- Exhibit A Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based, pages through , dated .
- Exhibit B Allowance items, pages through , dated .
- Exhibit C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages through , dated .
- Exhibit D Completion schedule, pages through , dated .
- Exhibit E Alternate prices, pages through , dated .
- Exhibit F Unit prices, pages through , dated .

ARTICLE II CONTRACT TIME

The date of Substantial Completion established by this Amendment is: .

OWNER

CONSTRUCTION MANAGER

(Signature)

(Signature)

(Printed Name and Title)

(Printed Name and Title)

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ATTACHMENT B

**FEDERAL RESERVE BANK OF NEW YORK
CONTRACT RIDER**

The Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, AIA Document A121/CMc and AGC Document 565, 1991 Edition, dated _____ between _____ (the "Construction Manager" or "CM") and the Federal Reserve Bank of New York ("Owner" or "Bank") is amended by this Rider as follows (as amended the "Agreement" or "AIA A121"). The entire contract between the parties shall consist of the Agreement, the AIA Document A201 Fourteenth Edition, 1987 as it may be amended by the Supplementary Conditions generated by the Bank for this Project (as amended, "AIA A201"), any Addenda, and the Contract Documents (as such term is defined in Subparagraph 1.01 below) (together, the "Contract"). In the event of any inconsistency between the terms of the AIA Document A121/CMc and AGC Document 565, 1991 Edition and this Rider, the terms of this Rider shall govern. To the extent that any provisions of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of the Project and the Owner shall prevail.

ARTICLE 1; GENERAL PROVISIONS

Add the following new Paragraph 1.0:

1.0 DEFINITIONS

Terms used throughout this Contract shall have their meaning set forth in Exhibit A (the Supplementary Conditions to AIA A201) unless otherwise defined herein or a different definition is clearly intended from the context. To the extent that the terms of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of the Project and the Owner shall prevail.

Add the following Subparagraphs:

1.0.1 Contract Documents The "Contract Documents" means the Contract, together with all Modifications thereto, the Construction Documents and Specifications and the Exhibits to this Contract listed in this Subparagraph 1.0.1 which are attached or deemed to be incorporated in this Contract as they are developed. The Contract Documents constitute the entire agreement between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents do not include any bidding documents, such as, any advertisements or invitations to bid, any instructions to bidders, any requests for proposals, any sample forms, any contractor or subcontractor bids or portions or addenda relating to these or any other documents, unless otherwise specifically enumerated in this Contract. For the Construction Phase of the Project, the General Conditions of the Contract shall be

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

AIA Document A201, Fourteenth Edition, 1987, as amended for this project by the Bank's Supplementary Conditions, which is hereinafter referred to in its modified form as "AIA A201" or "Exhibit A" and includes but is not limited to, the portions of this AIA A121 that pertains to the Construction Phase of the work and the "General Conditions of the Contract for Construction," and the following Exhibits:

- Exhibit A AIA A201, 1987 Edition and Supplementary Conditions thereto;
- Exhibit B Key Members of Construction Manager's Staff;
- Exhibit C Drawings and Specifications (as provided by the Consulting Architect at the appropriate completion level and attached upon acceptance of the Guaranteed Maximum Price);
- Exhibit D Section 531 of Title 12 of the U.S. Code re: Tax Exempt Status of Owner; and
- Exhibit E Building Rules.

1.0.2 Architect The "Architect" shall have the meaning that is defined in Article 4 of the AIA A201 except that the definition shall be expanded to include the word "Engineer" and the two words shall have the same meaning and be used interchangeably for this Project.

1.0.3 Work The "Work" shall have the meaning that is defined in Article 1.1.3 of the AIA A201 and shall include in general, but is not limited to, the following: any construction and services required by the Contract Documents as well as any services necessary for restoration/renovation of the 10th and 11th floors at the Bank's Main Building ("Main Building") located at 33 Liberty Street, New York, New York. The Work shall include all supervisory personnel, labor, materials, tools, supplies, equipment, additional services, scaffolding, transportation, licenses, etc., as well as any other methods of construction necessary for the Project completion required of the Construction Manager by the Contract Documents, even items or services which are not specifically stated in the Contract Documents but which are generally required under standard construction practices for this type of renovation or which can be reasonably inferred for a construction project of this nature. The Work shall also encompass any task or service that is required for the Construction Manager to turn over to the Owner a complete and quality finished construction project including all required permit signoffs and inspections required under any applicable law, regulation or building code. The Work does not include Pre-Construction Services performed by the Construction Manager.

1.0.4 Project The "Project" shall mean the overall undertaking in which the Architect, Owner, Construction Manager and others will participate to complete the necessary construction required for restoration/renovation of the 10th and 11th floors at the Main Building. In the event the examination by the Architect should identify any unsafe

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

conditions requiring immediate remedial repairs, then such repairs shall become part of the Project. It shall be the Construction Manager's responsibility to secure unit prices for such repairs. The Project shall include services required under this Contract (all phases), including the performance and completion of the Work, as well as the services required by the Architect and any other consultants or contractors the Owner may engage to assist in the completion of the Work and any tasks associated with the Project. The Bank will provide space to the CM and his subcontractors for temporary offices and shanties. All temporary facilities shall be removed prior to final payment being effected.

1.1 RELATIONSHIP OF PARTIES

Delete the word "reasonable" after the word "Manager's" in line 4 and replace it with the word "best."

Insert after the second sentence the following:

"Such services shall consist of all construction management and general contracting services and work required for a project of this size and complexity, and the services shall be performed to the highest professional standards followed by construction management and general contracting firms generally recognized as leaders of the construction industry."

1.2 GENERAL CONDITIONS

Insert after the word "Construction" in line 3, the following: "as it may be amended herein for this Project."

Insert after the word "Agreement" in line 8, the following: "as it may be amended herein for this Project."

Insert at the end of Paragraph 1.2 the following:

"Wherever the AIA Document A121/CMc and AGC Document 565, 1991 Edition, as it may be amended for this Project, or any portion of the Agreement make reference to AIA Document A201, it shall mean the "General Conditions of the Contract for Construction," AIA Document A201 Fourteenth Edition, 1987, as it may be amended for this Project by the Supplementary Conditions generated by the Bank ("AIA A201" or "Exhibit A")."

ARTICLE 2; CONSTRUCTION MANAGER'S RESPONSIBILITIES

Delete the third sentence of the first paragraph and replace it with the following:

"The Pre-Construction Phase may also include any Minor Work (see Subparagraph 2.3.1.1) that may be required prior to the start of the Construction Phase. The Owner

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

may, in its sole discretion, establish the pace and degree of overlapping, if any, of the Pre-Construction Phase, the Construction Phase, and the Post-Construction Phase, and may require time intervals between the phases which shall not be considered a delay of the Project. The Construction Manager shall begin to render such services on the date specified in a written notice from the Owner for each phase. All of the services described in this Article 2 shall collectively constitute the "Construction Manager's Services." The Construction Manager shall provide the Construction Manager's Services expeditiously, with due diligence, in accordance with the time periods set forth in Section 2.1 of the RFP of this Contract and as agreed to with the Owner at the time this Contract is executed."

2.1.1 PRELIMINARY EVALUATION

Delete Subparagraph 2.1.1 in its entirety and replace with the following:

"Within two (2) weeks of the date of this Contract, the Construction Manager shall provide a complete evaluation of the Owner's program and provide a preliminary cost estimate, in terms of one another, based on all the information available to that date. The preliminary cost estimate shall be reviewed and approved by the Architect and the Owner."

2.1.2 CONSULTATION

Insert the following after the second sentence:

"This consultation should include details with respect to all systems relevant to the Project, including, without limitation, rigging, structural, plumbing, security and communications, fire protection and life safety plans, heating, cooling, ventilation, and electrical."

Add the following new Subparagraphs:

2.1.2.1 LOGISTICS

The Construction Manager shall become familiar with the operating procedures of the Owner and any conditions, rules and regulations of Real Estate and General Services or any other agencies or physical restrictions or any activities or parts thereof on or about the Main Building that may impose restrictions on the Construction Manager or the Bank with respect to the cost or timely completion of the Project or the Work. The Construction Manager shall meet with the Bank and the Architect as required to discuss and address these issues to the mutual satisfaction of the Bank. The Construction Manager shall prepare a written report which identifies these and any other logistical or procedural issues that may impact the cost or time of completion of the Work and the Project. The Construction Manager shall generate a constructibility review for the Project in terms of these issues. The Construction Manager's review shall include in a detailed

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

fashion, but not be limited to, topics such as deliveries and vertical hoisting of materials and equipment for both the Owner and Construction Manager, street access limitations, parking and other logistical concerns, etc. The Construction Manager shall develop, compare and contrast various options for the cost and schedule and evaluate the implications of each of these options on the overall Project.

2.1.2.2 VALUE ENGINEERING

The Construction Manager shall review the "Design Development Documents" and the "Construction Documents" as they are being prepared by the Architect, and make recommendations to the Owner and Architect with respect to the items listed below. The Construction Manager shall meet with the Owner and Architect at a minimum of weekly intervals, to discuss and present recommendations on the documentation and marked-up drawing(s) prepared by the Construction Manager with respect to the following:

- (a) the construction feasibility with regard to all aspects of the Work;
- (b) the availability of labor, materials and supplies and actions designed to minimize adverse effects of labor or material shortages;
- (c) design options, installation, detailing and construction alternates and how these relate to construction costs including estimates of material and labor consistent with the Owner's requirements and sound construction practices; and
- (d) omissions, discrepancies and deficiencies, in the Construction Documents, or between the Construction Documents and existing conditions at the Main Building. Minor omissions and uncoordinated, reasonably inferred items shall not be reason for change orders or project delays.

2.1.2.3 ERRORS, OMISSIONS & TRADE CONSIDERATIONS

The Construction Manager shall review the "Design Development Documents" and the "Construction Documents" as they are being prepared by the Architect, and make recommendations to the Owner and Architect with respect to the items listed below. The Construction Manager shall meet with the Owner and Architect at a minimum of weekly intervals to discuss recommendations and present documentation prepared by the Construction Manager with respect to the following:

- (a) conduct of construction operations under good construction practices and any variations from customary construction, practices and methods which, in the Construction Manager's opinion, may cause difficulties or occasional delays in the performance of the Work; and

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

- (b) elimination of possible conflicts and/or overlapping jurisdictions among the various trades or overlapping responsibilities among Subcontractors.

2.1.2.4 LABOR AND MATERIAL SURVEY

The Construction Manager, within thirty (30) working days of the signing of this Contract, shall make a labor and material survey including an analysis of the costs, types and quality of labor required for the Work and a forecast of the availability thereof as and when needed, including a survey and schedule of the dates of all union labor contracts coming up for renewal during the projected period of construction. Such survey shall also include the Construction Manager's recommendations and plan regarding the development and administration of an effective labor relations program for the Work and the avoidance of labor disputes during the performance of the Work. The Construction Manager shall review the "Design Development Documents" and the "Construction Documents" as they are being prepared by the Architect, and make recommendations on unit prices and alternates for each component of the construction. The Construction Manager shall incorporate these recommendations into the bid packages as required by the Owner.

2.1.2.5 COMMUNICATION REQUIREMENTS

The Construction Manager shall maintain written records and computerized records, in a fashion acceptable to the Owner, of all communications with the Architect and the Owner and make the same available for inspection by the Owner at all times. Upon request, the Construction Manager shall promptly furnish to the Owner copies of all correspondence between the Construction Manager and Architect relative to the Project. The Construction Manager agrees to perform other services and attend such meetings during the Pre-Construction Phase as the Owner may request in order to assist in the preparation of the Construction Documents, cost estimates, updated Project Schedules and any other documents and instruments relative to the Work and the Project. The Construction Manager shall prepare and promptly distribute minutes of all such meetings to all attendees, the Owner, Architect and such other parties as may reasonably be designated by the Owner to receive such minutes.

2.1.3 PRELIMINARY PROJECT SCHEDULE

Delete the first sentence in its entirety replace with the following:

"The Construction Manager shall develop and submit within two (2) weeks of the signing of this Contract a preliminary Project schedule that shall include all aspects of the Project for review and approval by the Owner and Architect and shall provide updates at bi-weekly intervals thereafter. This preliminary Project schedule shall include all tasks required for the performance of the Work and any aspects of the Project outside the Construction Manager's scope of work. This preliminary Project schedule shall be fully

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

coordinated and integrated with the timing requirements as set forth by the Owner in this Contract. At the sixty five percent (65%) Construction Document phase, the preliminary Project schedule shall be replaced by a detailed Project schedule that shall include in a detailed fashion, but not be limited to, the following aspects of the Project:

- (a) a time schedule which identifies all major, minor, critical and non-critical components of the Work and the Project, including all milestone and interim dates for pre-purchasing materials (including long lead time items) from abroad or within this country;
- (b) the dates for commencement, Date of Substantial Completion and Date of Final Completion;
- (c) the dates for getting and reviewing bids and/or negotiated proposals and awarding Subcontracts;
- (d) the dates for all preliminary and final inspections;
- (e) dates for shutdowns and tie-ins of building systems;
- (f) dates for the start-up and testing of each portion of the Project.

The Construction Manager must obtain the Owner's and Architect's approval for any portion of any Project schedule relating to activities required by the Owner or services performed by the Owner's own forces or contractors or consultants."

Insert new subparagraph 2.1.3.1.

2.1.3.1 PROJECT SCHEDULE APPROVAL

The Architect shall review the detailed Project schedule and the Owner will notify the Construction Manager in writing when the detailed Project schedule has been accepted and approved by the Owner. This approval will be at the sole discretion of the Owner, and will take affect at the time the notification is sent to the Construction Manager. The Construction Manager agrees that the detailed Project schedule shall not be amended, modified or extended without the Owner's prior written approval.

2.1.5 PRELIMINARY COST ESTIMATES

Rename this Section, "COST ESTIMATES"

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Subparagraph 2.1.5.1: Delete in its entirety and replace with the following:

The Construction Manager shall prepare and submit, for review and approval by the Owner and Architect, a preliminary estimate of the cost of the Project, including supporting data. The finished preliminary estimate shall be submitted to the Owner within two (2) weeks of the signing of this Contract. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate bi-weekly or as required by the Owner and Architect. The Construction Manager shall also submit a detailed cost estimate to the Owner when Construction Documents are sixty five percent (65%) completed. The Construction Manager shall advise the Owner and Architect promptly if it appears that any estimate will exceed any previously approved cost estimate throughout the project and shall promptly provide a detailed estimate of overages and make appropriate recommendation(s) for corrective action that will enable adherence to the most recently approved Project estimate."

Delete Subparagraphs 2.1.5.2, 2.1.5.3, and 2.1.5.4 in their entirety.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

Delete in its entirety and replace with the following:

"Unless otherwise directed by the Owner, the Construction Manager shall enter into Sub-contracts with vendors who are to furnish materials and equipment, persons or entities performing the Work or other work necessary for the completion of the Project. The Owner shall direct the Construction Manager whether to enter into Subcontracts in the Pre-Construction Phase or the Construction Phase. Materials and equipment shall be purchased in a manner that assures use of the Owner's tax exemption (see Section 11.14). The Construction Manager shall solicit and enter into Subcontracts as follows:

- .1 Within fourteen (14) days of the signing of this Contract, the Construction Manager shall propose pre-qualification criteria for all Subcontractors and shall propose specific pre-qualification criteria for the elevator, HVAC, rigging, fire protection, plumbing and electrical Subcontractors. The Construction Manager shall include in the pre-qualification criteria any special Owner requirements. The Construction Manager shall meet with the Owner and Architect to finalize the pre-qualification criteria and shall prepare and submit to the Owner and Architect for their approval the pre-qualification criteria for each Subcontractor. The Owner shall have sole discretion as to the pre-qualification criteria used to determine the qualified bidders' list for each trade.**
- .2 The Construction Manager shall develop prospective interest in the Project among potential Subcontractors.**

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

- .3 The Construction Manager, based on the Owner and Architect approved pre-qualification criteria, shall identify potential service providers within each of those trades necessary for the Work, perform evaluations of their financial strength, current work loads, areas of qualification, capability of staff, strength of home office support, quality of work on similar projects, management and financial control systems, and references. The Construction Manager shall furnish these evaluations to the Owner and the Architect for review and submit a qualified bidders list by trade or type of construction activity for the Architect's and Owner's approval. An Owner-approved bidders' list shall be accepted and agreed to by the Construction Manager, Owner and Architect prior to the submission of a proposed Guaranteed Maximum Price by the Construction Manager.
- .4 The Construction Manager shall advise the Owner and Architect as to the appropriate limits of the scope of work for the trades to be used in the Project, based on careful research of qualified subcontractors.
- .5 The Construction Manager shall prepare bid packages using the Design Documents, Construction Documents, Technical Specifications and any other pertinent information prepared by the Architect, Owner, Owner's vendors and/or consultants and prepare separate bid packages for the Subcontracts, including written descriptions of the scope of work for a particular trade, model contracts, bidding instructions, and requests for unit prices, bonding and insurance requirements, reference requirements, and response dates. These bid packages shall be reviewed and approved by the Architect and Owner.
- .6 The Construction Manager shall distribute the bid packages to the Owner-approved bidders and solicit lump sum bids including man-hour estimates, alternates to the Work, unit pricing, and labor and material rates for the scope of work within each bid.
- .7 The Owner, at its sole discretion, shall have the option to require the Construction Manager to adhere to the Owner's procurement guidelines. At a minimum, the Construction Manager shall adhere to the following subcontractor bidding procedures: (i) bidding will be by sealed bid sent from the subcontractor to the Owner; (ii) bids will be opened by the Owner in the presence of the Construction Manager and Architect; and (iii) bids will be submitted to the Architect for review. If requested by the Owner, the Construction Manager shall clarify or shall obtain clarifications of unclear or missing information, and obtain corrected bids as necessary.

Construction Manager: _____ Bank: _____

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- .8 The Construction Manager shall certify and submit in writing to the Owner and Architect that all bids are on a common basis as to information contained in the bid packages, are in the proper format, are consistent with the requirements of the Construction Documents, provide a reasonable expectation for a fair profit for the bidder and include all relevant elements of the Contract.
- .9 The Construction Manager shall tabulate all the certified bids according to the scope of work, compare the bids to the detailed Project estimate, and shall submit to the Owner a recommendation for award with a statement of reasons for the recommendation and the bid tabulations. The selection of the successful bidder(s) shall be the responsibility of the Construction Manager, however the Owner will have the option to require the Construction Manager to select another bidder as the successful bidder. If the Owner requires the Construction Manager to select a bid other than the low bid and the Guaranteed Maximum Price has previously been established, an adjustment of the Guaranteed Maximum Price will be made for the difference between the cost of the successful bid and the low bidder, and an adjustment of contract time or schedule will not be allowed.
- .10 After the successful bidders have been selected, the Construction Manager shall negotiate with the selected Subcontractors on the terms and conditions under which each shall contract with the Construction Manager ("Subcontracts"). The Owner reserves the right to require that the Subcontracts comply with the Owner's procurement guidelines. During pre-award meetings, the Construction Manager shall ensure that each Subcontractor has a thorough understanding of the scope of work, of the manning and progress reporting information requirements, general site safety, housekeeping and other requirements for the Project.
- .11 The Bank may elect, at its sole option, to pay the subcontractors via dual party checks. The CM shall follow a specific invoice approval and/or payment process that will be established by the Engineer and approved by the Owner.
- .12 The Construction Manager shall issue notices to proceed as appropriate and as required in the Project schedule."

2.1.7 LONG-LEAD TIME ITEMS

Delete this section in its entirety and replace with the following:

"The Construction Manager shall review the "Design Development Documents" and the "Construction Documents" as they are being prepared by the Architect and shall identify

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all materials or equipment that may require a lead time for delivery of over six (6) weeks from the time of order ("Long-Lead Time Items"). The Construction Manager shall recommend the most effective way of acquiring these items. The Construction Manager shall determine and submit to the Owner a report outlining the cost and schedule implications associated with long-lead time procurement of Long-Lead Time Items. If required by the Owner, the Construction Manager shall develop long-lead time procurement packages including budget, schedule, bid, award and engineering. The Construction Manager shall also be responsible for the deliveries of any Long-Lead Time Item purchases. These early purchase packages shall be executed, based on the sole discretion of the Owner."

2.1.8 EXTENT OF RESPONSIBILITY

Delete this section in its entirety.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Rename this Section, "EQUAL EMPLOYMENT OPPORTUNITY"

Delete in its entirety and replace with the following:

"In performance of this Contract, the Construction Manager agrees that with respect to the Project the Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination."

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

Replace the title of Subparagraph 2.2 with the following, "GUARANTEED MAXIMUM PRICE PROPOSAL, CONTRACT TIME AND OPTIONS TO CONTRACT METHODOLOGY"

Delete Subparagraph 2.2.1 in its entirety and replace with the following:

"Within fourteen (14) days of a request by the Owner, which shall be no earlier than delivery to the Construction Manager of Construction Documents that are at least seventy-five percent (75%) complete as determined by the Architect, the Construction Manager agrees to propose a Guaranteed Maximum Price. The Owner may request the Construction Manager to revise the Guaranteed Maximum Price based on revisions to the Contract Documents, as often as deemed necessary at bi-weekly intervals. The Construction Manager shall certify in writing to the Owner that the Guaranteed Maximum Price is the amount for which the Construction Manager shall guarantee the performance and completion of the Work and all required Construction Manager

Construction Manager: _____ Bank: _____

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Services, inclusive of, but not limited to, all of the Cost of the Work., the Construction Manager's Fee, Construction Manager's General Conditions and Construction Manager's Contingency."

2.2.2 Insert after the word "as" in line 8, the word: "significant".

Insert at the end of Paragraph 2.2.3 the following:

"The Construction Manager's Contingency shall not exceed the percentage of the total value of the Cost of the Work as set forth in Article 5, based on when the Guaranteed Maximum Price was established."

Add the following new Subparagraph "2.2.3.1 Establishment of Guaranteed Maximum Price"

2.2.3.1 After receipt of the Construction Manager's certification of the Guaranteed Maximum Price, the Owner may accept or reject such certification and thus the Guaranteed Maximum Price, by written notice to the Construction Manager. If the Owner fails to accept the Construction Manager's certification, and thus the Guaranteed Maximum Price, within thirty (30) days after receipt thereof, the certification shall be deemed rejected.

2.2.3.1.1 Acceptance of Guaranteed Maximum Price

- (i) If the Owner accepts the Guaranteed Maximum Price, the Compensation is based on the Subcontract Costs, established through competitive bidding, plus the agreed upon percentage for General Conditions and the agreed upon percentage for Construction Manager's Fee and Contingency as outlined in the Contract. If the final Cost of the Work plus the Cost for the Construction Manager's Services is less than the Guaranteed Maximum Price as adjusted for Changes in the Work, one hundred percent (100%) of any such savings shall inure to the Owner's benefit and Owner will have no obligation to pay such amount to the Construction Manager. If the final Cost of the Work plus the Cost for the Construction Manager's Services exceeds the adjusted Guaranteed Maximum Price, any such additional cost shall be borne by the Construction Manager and the Owner will have no obligation to pay such amount to the Construction Manager.
- (ii) Lump Sum Option: After the Owner has accepted the Guaranteed Maximum Price, the Owner, at its sole discretion, may convert the Guaranteed Maximum Price to a Lump Sum Amount at which time the method of compensation to the Construction Manager shall be a lump sum. If the Owner opts to convert to this lump sum method, the Construction Manager shall provide, inclusive of but not limited to, any and all services required of the Construction Manager, any and all required construction including all subcontracts, all Construction Phase and Post Construction Phase Services, and any other services required to complete the Work as stated in this Agreement, the Contract and the Construction Documents for this Lump Sum Amount. The "Lump Sum Amount" shall be of equal value, in current dollars, to the Guaranteed Maximum Price that was certified

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by the Construction Manager and accepted by the Owner, less the Construction Manager's Contingency. Alternatively, the Owner may propose to the Construction Manager a lower lump sum amount which, if acceptable to the Construction Manager, shall become the Lump Sum Amount. The Owner may choose to convert to a lump sum contract any time after acceptance of the Guaranteed Maximum Price until 14 (fourteen) days after a time when all subcontracts for each trade have been awarded. If the Owner opts to convert the method of payment to a Lump Sum Amount, the method for compensation and progress payments for all the Work and Services provided by the Construction Manager and any subcontractor shall be based on the AIA A201 as amended.

2.2.3.1.2 Rejection of Guaranteed Maximum Price

If the Guaranteed Maximum Price is not accepted, the Owner, at its sole discretion, shall have the following options for determination of a Guaranteed Maximum Price acceptable to the Owner and/or otherwise compensating the Construction Manager for completing or terminating his Work:

- (1) The Owner may continue to retain the Construction Manager under the terms of this Contract and request another Guaranteed Maximum Price at a later time; or
- (2) The Owner may meet with the Construction Manager and attempt to negotiate a mutually acceptable Guaranteed Maximum Price. If the parties agree on a Guaranteed Maximum Price, the Construction Manager shall formally submit that price for the Owner's acceptance within three (3) business days from the date of the agreement; or
- (3) The Owner may require the Construction Manager to administer the pre-construction phase of the Contract, including the competitive bidding, and complete the construction of the Work for which the Construction Manager will be compensated for the Cost of the Work, which includes the General Conditions, less the Construction Manager's Contingency, plus the Construction Manager's Fee; or
- (4) The Owner may terminate this Contract, pay to the Construction Manager any Cost of Construction Manager's Services for services rendered prior to the date of termination, assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions of the Construction Manager's Services to another Construction Manager acceptable to the Owner.

2.2.4.4 Insert after the word "contingency" in line 3, the words: "General Conditions,"

2.2.5 Delete the word "promptly" in line 5.

Construction Manager: _____ Bank: _____

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Delete Subparagraph 2.2.6 in its entirety and replace with the following:

“After receipt of the Construction Manager’s certification of the Guaranteed Maximum Price, the Owner may accept or reject the certification and the Guaranteed Maximum Price by written notice to the Construction Manager. If the Owner fails to accept the Construction Manager’s certification and the Guaranteed Maximum Price within thirty (30) days after receipt thereof, the certification and the Guaranteed Maximum Price shall be deemed rejected. If the Owner agrees to accept such certification, the Guaranteed Maximum Price shall become effective on the date the Construction Manager receives the Owner’s written notice of acceptance.”

Delete Subparagraph 2.2.10 in its entirety and replace with the following:

“Due to the Owner’s tax exempt status, the Guaranteed Maximum Price shall not include any taxes.”

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

Delete Subparagraph 2.3.1.1 in its entirety and replace with the following:

“The “Construction Phase” shall commence on the date specified in a notice from the Owner to the Construction Manager, during which the Construction Manager shall perform Construction Services. As required and at the Owner’s request, the Construction Manager shall provide small scale construction type work (“Minor Work”) on a cost plus fee or negotiated lump sum basis without initiating the Construction Phase of the Project or obligating the Owner to contract the remainder of the Work to the Construction Manager.”

Add the following new Subparagraphs:

2.3.1.2 DELAYS

“The Construction Manager shall be responsible for any costs, delays or other damages sustained by the Construction Manager or Owner resulting from the Construction Manager’s failure to provide complete consulting services during the Pre-construction Phase of the Project, specified in Sections 2.1 and 2.2 of AIA A121. Specifically, and without limiting the foregoing, it is the responsibility of the Construction Manager to maintain the detailed Project schedule. The Construction Manager shall notify the Architect and Owner promptly in writing if the Construction Manager anticipates that it will not be able to comply with the detailed Project schedule. If the Construction Manager so notifies the Architect and Owner, and if, in the opinion of the Owner as reasonably exercised, the Construction Manager falls behind in the detailed Project

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schedule for any reason other than a delay for which the Construction Manager has received an extension of time by the Owner, the Construction Manager shall take whatever steps may be necessary to improve the progress of the Work and shall, if requested by the Owner, submit operational plans to demonstrate the manner in which the lost time may be regained. If the Owner determines, in its sole discretion, that the Construction Manager or any of its Subcontractors is responsible for a delay in the progress of the Work, the Construction Manager shall increase, in connection with the performance of the Site-Related General Conditions, and shall cause the Subcontractors to increase, in connection with their performance of their respective portions of the Work pursuant to Subcontracts, the number of workers, the number of shifts, the days of work and, to the extent permitted by law, institute overtime operations, all at no additional increase to the GUARANTEED MAXIMUM PRICE or cost to the Project Contingency, in order to regain any time lost and maintain the Project Schedule. Failure of the Construction Manager to comply with the provisions of this subparagraph 2.3.1.2 shall lead to the determination that the Construction Manager is not prosecuting the Work with such diligence as will assure completion within the approved detailed Project schedule. Upon such determination, the Owner may, without thereby waiving any other right or remedy hereunder, at law or in equity, terminate, in accordance with the applicable provisions of this Contract, the Construction Manager's right to proceed with the performance of this Contract.

2.3.1.3 FINAL COMPLETION

Final Completion of the Work; the Work, including any Change Orders, shall be deemed "finally complete" on the date upon which all of the following conditions are met: (a) the Architect has certified in writing to the Owner that all of the Work has been finally completed and the Owner shall have received evidence satisfactory to the Owner establishing that all Work, including all "Punch List" items, has been fully and satisfactorily completed in a good and workmanlike manner, all in strict conformance with the Contract Documents and in full compliance with governing laws and regulations of authorities having jurisdiction and any legal requirements; (b) all final certificates of approval relating to the Work and the contemplated uses of the Project shall have been issued and delivered to the Owner; (c) all required receipts, releases of liens, affidavits, maintenance manuals, spare parts, waivers, guarantees, warranties, bonds, record drawings, and any other documents required under this Contract or the Subcontracts shall have been issued and delivered to the Owner; and (d) all testing and training related to the installation of any equipment or materials installed as part of the Work have been received and accepted by the Owner.

Construction Manager: _____ Bank: _____

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2.3.2 ADMINISTRATION

2.3.2.1 Delete the words “list previously reviewed” in line 7 and replace with the following: “Owner-approved bidders’ list”.

2.3.2.1 Delete the third sentence beginning in line 9 with the words “The Owner” and replace with the following: “The Construction Manager shall then determine, subject to objection of the Owner and Architect, which bids will be accepted.”

2.3.2.1 Delete the words “qualified bidders” in line 16 and replace with the following: “bidders on the Owner-approved bidders’ list”

Delete Subparagraph 2.3.2.2 in its entirety.

2.3.2.4 Insert at the end thereof the following: “As required by and as requested by the Owner, the Construction Manager shall schedule, conduct, and maintain minutes for additional meetings relating to specific tasks associated with the Project. These meetings may require the attendance of some or all of the Construction Manager’s staff as determined by the Architect. These meetings shall include, but are not limited to, meetings related to the following topics: communication and security systems; plumbing, mechanical, electrical and fire protection services; project logistics; Main Building issues; rigging issues; and coordination with Owner’s vendors. These meetings may at times address portions of the Project that are not solely related to the Construction Manager’s scope of work.”

2.3.2.5 Delete in its entirety and replace with the following:

“The Construction Manager shall be in strict compliance with all time periods relating to his performance under the Contract Documents that are set forth in the detailed Project schedule. The Construction Manager shall promptly and diligently perform, or cause to be performed, the Work in accordance with the time periods set forth in the detailed Project schedule.”

Add the following new Subparagraphs:

2.3.2.8 SHOP DRAWING SCHEDULE

At the start of the Construction Phase, the Construction Manager shall submit to the Owner a detailed shop drawing schedule. This schedule shall list all required shop drawings and outline time frames for submission, review and approval of these shop drawings and detail the schedule in a way that best meets the Owner’s objectives and the detailed Project schedule. The shop drawing schedule shall be approved by both the Owner and Architect and submission times shall be spaced at reasonable intervals so as to prevent multiple submissions for review by the same discipline for the same period of time. The Construction Manager shall incorporate reasonable times for review by the Architect and

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Owner. The Construction Manager shall periodically review with the Architect the submittal and approval schedule and prioritize submittals requiring early review. The Construction Manager shall maintain a detailed shop drawing log and shall update and submit this log to the Owner and Architect one (1) day prior to the weekly Project meeting. Notwithstanding anything in this Agreement to the contrary, the Construction Manager acknowledges and agrees that the Bank considers any drawings, specifications, plans, or other similar documents, in no matter what form they may exist, that are related in any way to the Bank's layout, design, or construction ("Plans") to be very sensitive for security reasons. The Construction Manager further acknowledges and agrees that it shall maintain any Plans furnished by the Bank in connection with this Agreement or otherwise obtained by the Construction Manager in a strictly confidential and secure manner. The Construction Manager shall share, provide, or otherwise disclose Plans only to the Construction Manager's employees, agents, and subcontractors and only on a strictly need-to-know basis and shall ensure that such employees, agents, or subcontractors maintain any Plans that are disclosed to them in a strictly confidential and secure manner. At the conclusion of the Project or other termination of this Agreement, the Construction Manager shall promptly return any and all Plans to the Bank, including any Plans that it has shared with, released to, or otherwise provided to any third party.

2.3.2.9 SUBMITTAL/SHOP DRAWING SYSTEM PACKAGES

The Construction Manager shall provide the Owner with complete and detailed "Commissioning Packages" submitted to the architect for approval which shall contain all pertinent information of the systems being installed under the scope of work. These packages shall include shop drawings, as-built drawings, certificates, test reports, cut sheets, design specifications, specification sheets, maintenance requirements, operation manuals and instructions, etc. These "Commissioning Packages" shall also include detailed specifications on each component of each system, shall be organized system by system and shall incorporate submissions of various trades into singular system packages.

2.3.2.10 REQUESTS FOR INFORMATION

The Construction Manager shall submit all requests for information ("RFI") in writing to the Architect. The Construction Manager shall maintain a log of RFIs and update the log for submission to the Architect one (1) day prior to weekly Project meetings.

2.3.2.11 CONSTRUCTION MANAGER'S SUPERVISORY PERSONNEL

The Owner shall have the absolute right, in its sole discretion, to reject the individuals proposed by the Construction Manager for such positions as Project Manager, Project Superintendent and other staff / supervisory positions associated with the Project. Once approved, such individuals may not be removed, or others substituted, without the Owner's prior written approval in each instance, unless they cease to be employed by the Construction Manager. The Owner's right to approve or disapprove the individuals to be

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

assigned to the Project shall continue throughout the duration of the Project so that, if the Owner becomes dissatisfied with the performance of the Project Manager, Project Superintendent, or any other staff/supervisory person at any time, the Owner may require, upon three (3) days written notice to the Construction Manager, that the Construction Manager submit to the Owner for approval substitute persons to take over the duties and obligations of the Project Manager, Project Superintendent, or any other staff/supervisory person.

2.4 PROFESSIONAL SERVICES

Insert before the first sentence of Paragraph 2.4 the following:

“The Construction Manager shall provide competent construction professionals and other Construction Manager personnel as specified in Exhibit B and as stipulated at the time of the Agreement. The Construction Manager shall at all times have members of his professional construction staff satisfactory to the Owner present at the Main Building, inclusive of but not limited to, when any of the following activities are taking place: demolition or construction, delivery of material and equipment, any testing and/or system certification, any required surveying, when the Architect and/or Owner are present and either requests the presence of the Construction Manager or when any employee of the Construction Manager or any subcontractors or their employees are in the Main Building performing any task required for the completion of the work. The Construction Manager shall make available specific members of his professional construction staff as required by and are acceptable to the Owner.”

ARTICLE 3; OWNER’S RESPONSIBILITIES

3.1 Information and Services

3.1.1 Delete the word “full” in line 1 and replace with the following: “available.”

Delete section 3.1.2 in its entirety.

3.1.3 Delete section 3.1.3 in its entirety and replace with the following:

“After the Construction Manager submits the first preliminary cost estimate for the Project and the Architect has reviewed and evaluated this information, the Owner and Architect shall establish and update an overall budget for the Project, based on consultation with the Construction Manager, which shall include contingencies for changes in the Work.”

Delete section 3.1.4 in its entirety.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

3.2 OWNER'S DESIGNATED REPRESENTATIVE

Insert the following new second sentence:

“However, the Owner may at any time substitute another representative upon seven (7) days prior written notice to Construction Manager.”

3.3 ARCHITECT

Insert after the words “AIA Document B141” in line 4, the following: “as may be amended for this Project.”

Delete the second sentence of the paragraph in its entirety.

Delete the last sentence of the paragraph in its entirety.

3.4 LEGAL REQUIREMENTS

Delete the last sentence of the paragraph in its entirety.

ARTICLE 4; COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

4.1.1 Insert the following as the basis for compensation and Payment for pre-construction services:

“For the Pre-construction Phase Services described in, but not limited to, Paragraph 2.1 and 2.2 of this Agreement the Construction Manager’s compensation, billable on a time-card basis, shall not exceed the Amount of \$_____. The Construction Manager shall provide supervisory and construction management staff to perform the Pre-construction phase services listed in Exhibit A.”

4.1.2 Delete in its entirety and replace with the following:

“Compensation for Pre-construction Services shall be based on a Not-To-Exceed amount billable on an hourly basis with time card backup.”

4.1.3 Delete in its entirety.

4.2.1 Delete the phrase “the Construction Manager’s invoice” in line 1 and replace it with the following: “Owner’s receipt of a proper invoice from the Construction Manager which is sufficiently detailed to satisfy Owner’s accounting requirements.”

4.2.2 Insert after the word “payable,” the following: “forty five (45) days.”

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

4.2.2 Delete the phrase "Construction Manager's invoice is received by Owner" in the first sentence and replace it with the following: "Owner's receipt of a proper invoice from the Construction Manager which is sufficiently detailed to satisfy Owner's accounting requirements." Delete the second sentence in its entirety.

ARTICLE 5; COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Delete section 5.1.1 in its entirety and replace with the following:

"The Construction Manager's "General Conditions" shall include: (i) the Construction Manager's compensation for all costs associated with performance of the Work as described in Paragraph 2.3; (ii) any costs required for the Construction Manager to complete the Work or required as part of AIA A201 and to complete the construction as required by the Contract or Construction Documents; and (iii) any costs normally associated with or included in the cost for General Conditions for a General Contractor administered construction project of similar scope. The "Cost of the Work" shall also include Construction Manager's Contingency."

Add the following new Subparagraphs:

5.1.1.1 "For compensation for these General Conditions, the Construction Manager shall be paid an amount equal to ____% of the cost of the subcontracts required to complete the Work. Insurance shall be ____% of the actual cost of the work. Builders Risk shall be \$_____

5.1.1.2 "For compensation of the Construction Manager's Fee, the Construction Manager shall be paid an amount equal to ____% of the cost of the subcontracts required to complete the Work."

5.1.1.3 "Subcontract Costs shall include, but not be limited to, the costs for all labor, equipment and materials to be manufactured, fabricated, and/or installed on, in and around the Main Building in order to complete the construction of the Work as required by the Construction Documents and the Contract."

5.1.1.4 "Construction Manager's Contingency" shall be defined as stated in Paragraph 2.2.3. The Construction Manager's Contingency shall be fixed at the acceptance of the initial Guaranteed Maximum Price and shall not exceed the following percentages of the Cost of the Work based on when the Guaranteed Maximum Price was established:

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Date: _____ Date: _____

<u>Guaranteed Maximum Price established</u>	<u>Maximum contingency</u>
Prior to 100% construction documents	_____ percent
100% construction documents but prior to execution of all major Subcontracts	_____ percent
After execution of all major Subcontracts	_____ percent

5.2.1 Add the following:

“All savings within the GUARANTEED MAXIMUM PRICE shall be returned in full to the Owner”

5.3 CHANGES IN THE WORK

Delete Subparagraph 5.3.1 in its entirety and replace it with the following:

“Owner initiated or design required changes made during the design process and during generation of the Construction Documents prior to execution of Amendment No. 1 shall not alter the Guaranteed Maximum Price unless such change is a significant material change or significantly modifies the scope of the Work. The Guaranteed Maximum Price will not be altered for “unforeseen conditions” which the Owner determines, in its sole discretion, that the Construction Manager should have reasonably observed or anticipated prior to the Owner’s acceptance of the Guaranteed Maximum Price. Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1, including if and when the Owner opts to change the method of compensation and payment to a lump sum, shall be made on the basis of Subcontract Costs plus the percent of Subcontract Costs for the Construction Manager’s General Conditions, as stated in Subparagraph 5.1.1.1, plus the percent of Subcontract Costs for the Construction Manager’s Fees as stated in Subparagraph 5.1.1.2”

Delete Paragraph 5.3.4 in its entirety.

ARTICLE 6: COST OF WORK FOR CONSTRUCTION PHASE

6.1.1 Delete the word “only” in line 3 and replace with the following: “but not be limited to”

Delete Paragraph 6.1.2.2 in its entirety.

6.1.2.4 Delete the word “taxes” in line 1.

Construction Manager: _____ Bank: _____

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Rename Paragraph 6.1.4 the following:

“COSTS OF MATERIAL AND EQUIPMENT INCORPORATED IN THE SUBCONTRACT COSTS”

6.1.4.1 Delete the period (.) at the end of the sentence and replace with the following: “testing and certification of any of these materials and equipment, and any other costs for any work, including labor, materials or equipment normally performed by subcontractors under industry standard construction practices, shall be incorporated into Subcontract costs.”

6.1.6 MISCELLANEOUS COSTS

Delete Paragraph 6.1.6.2 in its entirety.

6.1.6.3 At the end of the sentence insert the following: “Only those costs for fees generally required as part of a general contractors or subcontractors scope of work.”

Delete Paragraph 6.1.6.8 in its entirety.

Rename Paragraph 6.2 the following: **“COSTS INCLUDED IN THE CONSTRUCTION MANAGER’S GENERAL CONDITIONS”**

6.2.1 Delete the word “not” in line 1.

6.2.1 Insert at the end of the sentence before “:” in line 1, the following: “all of the Construction Manager’s expenses as described in this Section 6.2.1, with the exception of 6.2.1.7. Compensation for these costs shall be included in the Construction Manager’s Compensation for General Conditions and shall include, but not be limited to, the following.”

ARTICLE 7: CONSTRUCTION PHASE

7.1.7.1 Insert after the words “percentage completion” in line 2, the following: “as determined by the Architect”.

7.2.4 In line 3, delete the words “mediation or arbitration” and insert the word “resolution.”

ARTICLE 8; INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

Insert the following at the end of Paragraph 8.1:

“The Construction Manager shall purchase and maintain, as primary Insurance, minimum limits of Insurance as set forth below to protect itself from claims arising out of or resulting from the

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Construction Manager's operations under the Contract, whether such operations are undertaken by the Construction Manager, any Subcontractors, and/or by any person and/or entity for which any of the foregoing may be liable:

- 1) Claims under workers compensation, disability benefits, and other similar employee benefit acts;
- 2) Claims for damages for bodily injury, occupational sickness or disease, or the death of any employee of the Construction Manager, and/or any Subcontractors;
- 3) Claims for damages for of bodily injury, occupational sickness or disease, or the death of any person other than an employee of the Construction Manager or Subcontractor;
- 4) Claims for damages for Personal and Advertising injury which are:
 - (a) Sustained by any person as a result of an occurrence directly or indirectly related to the employment of such person by the Construction Manager, and/or,
 - (b) Sustained by any other person.
- 5) Claims for damage to the Work, including loss of use, and including the cost to remove, replace, or restore the Work, which arise from injury to or destruction of tangible property, or arise from the inadequate installation of, or provision of, or defects in, the Work;
- 6) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and/or
- 7) Claims for damages because of bodily injury or death of any person or because of property damage arising out of any motor vehicle, machinery or equipment."

Insert the following new Subparagraph 8.1.1.0:

Insurance Definitions

"Advertising Injury" – An injury arising from advertising activities, employee publications and all other oral, written, televised, videotaped, electrically transmitted or any otherwise

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disseminated materials, for: Libel, slander, defamation, or disparagement; Violation of right of privacy; Misappropriation of ideas; Infringement of copyright, trademark, title, or slogan; or Unfair competition.

"Bodily Injury" – The definition of bodily injury is to include physical injury, sickness, disease, death, mental injury, emotional anguish, shock or humiliation.

"Occurrence" - An event, or continuous or repeated exposure to conditions, which cause injury during the Policy period. All such exposure to substantially the same general conditions at or emanating from the insured location or insured project shall be deemed one "occurrence."

"Personal Injury" – Injury sustained as a result of wrongful eviction, false arrest, detention or imprisonment, malicious prosecution, libel, slander or defamation, invasion of privacy, wrongful entry or dismissal, or discrimination.

"Property Damage" – All risk of physical loss of or damage to real and personal property, including the loss of use thereof.

Insert the following in Paragraph 8.1.1:

"Workers' Compensation and Employer's Liability Insurance as required by all applicable local, State and/or Federal laws, and including a Voluntary Employers Liability Rider. All certificates of insurance must specifically note that the statutory provisions of the state or district where the Work is located apply. The Employer's Liability Insurance shall be written for no less than the following limits, or for an unlimited amount if allowable by the appropriate state of jurisdiction:

- (a) Bodily Injury by Accident - \$1,000,000 Each Accident
- (b) Bodily Injury by Disease - \$1,000,000 Policy Limit
- (c) Bodily Injury by Disease - \$1,000,000 Each Employee"

Delete the lines and descriptions immediately following Paragraph 8.1.2 and replace as follows:

"Comprehensive General Liability Insurance (broad form), written on an "occurrence" basis, including a per-project/per-location amendment to the general aggregate limit. Such policy shall provide cover for Bodily Injury and Property Damage, and for Personal & Advertising injury:

- (a) Minimum Limits of Liability:
 - (i) Bodily Injury and Property Damage Per Occurrence Combined
Single Limit: \$1,000,000
 - (ii) General Aggregate: \$2,000,000

Construction Manager: _____ Bank: _____

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- (iii) **Products and Completed Operations Per Occurrence and Aggregate: \$2,000,000**
 - (iv) **Personal & Advertising Injury: \$1,000,000**
 - (v) **Medical Payments: \$10,000**
- (b) **The Comprehensive General Liability Policy shall provide insurance for the Construction Manager for Bodily Injury (including mental anguish and emotional distress) to third parties, Personal Injury to third parties, and Property Damage to third parties' property, other than to the Work, arising out of or resulting from:**
- (i) **Operations of the Construction Manager or it's employees, called "Premises Operations;"**
 - (ii) **Work performed by any of the Subcontractors, called "Sublet Work" or "Independent Construction Managers;"**
 - (iii) **Broad Form Construction Manager's Liability, called "Hold Harmless Clauses" or "Indemnity Agreements;"**
 - (iv) **Products Liability and Completed Operations Insurance covering claims arising from the work during the duration of the Project and for a period of two years after the completion of the Project;**
- (c) **Such policy shall contain no restriction on work operations involving underground structures, piping, utilities, sewers, excavating, sheeting, shoring and/or similar constructed improvements; and**
- (d) **Such policy shall contain no restriction on claims arising from property damage caused by explosion and/or collapse of or damage to underground structures, piping, utilities, sewers, excavating, sheeting, shoring, and/or similar constructed improvements.**

The Construction Manager's insurance required under this paragraph shall be written for no less than any limits of liability as herein specified, or as required by law, whichever is greater, by a company or companies licensed to do business in the State of New York, and/or in the district where the Work is located. Such companies shall have a minimum "A-" or better policyholder's rating, and a "Class XI" or better financial rating as listed in the most current edition of the A.M. Best Insurance Guide available on the date of the execution of the Contract."

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Insert the following in Paragraph 8.1.3:

Comprehensive Automobile Liability insurance, providing coverage for Bodily Injury and Property Damage for claims arising from the operation, use, and/or loading and unloading of any motor vehicle:

- (a) **Limit of Liability - \$1,000,000.**
- (b) **The policy shall contain no exclusion for liability assumed under contract.**

Insert the following in Paragraph 8.1.4:

Excess or Umbrella Liability Insurance in an amount not less than \$25,000,000 following the forms and amounts of primary General Liability, Automobile, and Workers' Compensation and Employers Liability Insurance as described in Subparagraph A hereof.

If required by the Owner for the Project, the Construction Manager will obtain and the Owner will reimburse the cost for Construction Manager's Pollution Legal Liability Insurance, with limits not less than \$2,000,000 per loss with a \$5,000,000 aggregate to provide coverage for any environmental claims incurred in connection with the Contract, and occurring on or away from the premises. Policy shall include coverage for both third party pollution liability and remediation. Policy shall include Bank as a Named Insured and shall include cover for completed operations for a two (2) year period beyond the completion of the contract.

If required by the Owner for the Project, the Construction Manager will obtain and the Owner will reimburse the cost for Errors and Omissions coverage with limits no less than \$5,000,000 per occurrence and \$5,000,000 any aggregate, providing coverage for loss or damage resulting from Construction Manager's professional errors and omissions or wrongful acts committed in the course of advising on any and all environmental matters; and/or wrongful acts committed in the course of rendering, or failing to render, professional services, such as architectural, engineering, surveying, or other such services, which are undertaken in connection with the Contract.

Unless specifically excepted by the Bank, Builder's Risk Insurance providing coverage to all supplies, materials, and equipment, required for the Work, until such supplies, materials, or equipment is installed and accepted by the Bank.

All of the insurance coverage described in this Article 8 maintained by the Construction Manager shall provide that:

- (1) **The Bank shall be included in the policy as Additional Insured, as its interest may appear, with the understanding that any obligation imposed upon the insured parties, including, but not limited to, the liability to pay premiums, shall be the sole obligations of the Construction Manager and not the Bank.**

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

- (2) Construction Manager and its Subcontractors expressly waive all rights of subrogation, set-off, and counterclaim against the Bank for damages payable by Insurance obtained pursuant to this Agreement or any insurance coverage's applicable to the work. The policies of insurance required to be carried by Construction Manager and all Subcontractors shall provide such Waivers of Subrogation by endorsement or policy language.
- (3) The Construction Manager's insurance policies shall be endorsed so as to indicate that its policies provide primary and non-contributory coverage for all claims of any type or nature against the Bank, arising out of or resulting from the provision of the Work by the Construction Manager, and/or any Subcontractors. Any other valid and collectable insurance which includes the Bank as Named Insured shall in no instance be considered as primary, co-insurance, or contributing insurance. (The Construction Manager's policy may allow the Subcontractor's policy to provide primary cover in the event of a claim arising from the Subcontractor's negligence.) These policies shall further be endorsed to allow Cross-Claim and Severability of Interest Endorsements for claims due to the actions and/or inaction of the Construction Manager and/or any Subcontractor.
- (4) All losses shall be payable without restriction on the nature of the Work, the occupation of the Construction Manager or use of the Work and/or the site, or portion(s) thereof.

The Construction Manager shall require each of the Subcontractors to procure and maintain Insurance coverage with Terms and Conditions equal to or exceeding those specified above in this Section 8.1. Such coverage shall remain in effect until the approved completion of such Subcontractor's portion of the Work, and for an extended period, as specified above, for exposure arising from the completed operations. The Construction Manager shall be solely responsible for ensuring that each such Subcontractor complies with all of the insurance requirements hereunder. The Construction Manager is further charged with monitoring each Subcontractor's compliance with this provision.

A Certificate of Insurance signed by the insurance carrier or the carrier's authorized agent stating the limits of the liability and the expiration date of each coverage, and warranting the Construction Manager's compliance with the above specified provisions shall be delivered to the Bank prior to the commencement of the Work. Additionally, such carrier or such authorized agent shall provide a warranty statement that the insurance requirements under the Article A have been fully met and are covered under such certificate. Should the initial insurance policy expire prior to the final completion of the Work, a renewal certificate and additional warranty statement shall be furnished to the Bank not later than 30 days prior to such expiration date. All certificates shall contain a provision that coverage shall not be canceled, materially amended, or allowed to expire without at least sixty (60) day prior written notice to the Bank.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

The Construction Manager shall, at all times through final completion of the Work, carry and maintain, at the Construction Manager's sole expense, full replacement cost coverages for damages to or loss of the Construction Manager's assets, including tools, equipment, material, and facilities required for his provision of the Work.

The Owner shall continue to occupy or use a portion or portions of the Work prior to Substantial Completion thereof. The Contractor shall insure that the insurance company or companies providing the property insurance have consented to this occupancy and use by endorsement to the policy or policies. The insurance shall not be canceled or lapsed on account of such partial occupancy or use.

Compliance by the Construction Manager with the insurance requirements set forth in this Article 8 shall not relieve the Construction Manager of any liability arising from any indemnity or other such agreement as set forth in the contract documents, nor shall the Construction Manager's liability, be limited by the amount of any applicable insurance.

Delete in line 1, the words "at least" in Paragraph 8.1.2.2.

Insert in line 1, the number "2" before the word "year(s)." in Paragraph 8.1.2.2.

Delete in line 2, the words, "either ninety (90) days following Substantial Completion or" in Paragraph 8.1.2.2.

Insert in line 2 of Paragraph 8.1.2.3 at the end thereof, the words "and shall be as follows:

Bodily Injury:	\$5,000,000 Each Occurrence
Bodily Injury:	\$5,000,000 Aggregate
Property Damage:	\$5,000,000 Each Occurrence
Property Damage:	\$5,000,000 Aggregate"

Add the following new Subparagraph 8.1.2.4:

If the General Liability coverages are provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2 of AIA A201.

8.2 INSURANCE REQUIRED BY THE OWNER

Delete section 8.2 in its entirety and replace with the following:

The Owner shall not be obligated to procure or maintain any form of fire (property), liability, or other insurance. Notwithstanding the foregoing, the Owner understands and accepts that because the Owner is not providing such Builders Risk Insurance, that the Construction Manager will

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

provide same within the cost of the GUARANTEED MAXIMUM PRICE as part of the Cost of the Work as a separate direct cost work item (not included within the Construction Manager's general conditions or fee).

If requested by the Bank, the Construction Manager shall purchase and maintain for the benefit of the Bank, Owner's Protective Liability Insurance as a separate policy or as an endorsement to the Construction Manager's Comprehensive General Liability Policy. Such separate policy or endorsement shall be written with the same limits of liability as specified above. If the Construction Manager is notified in writing by the Bank, prior to the date of the execution of the Contract, of the Bank's intention to require such Owner's Protective Liability insurance, the Construction Manager's costs for providing such insurance shall be deemed to be included in the Contract Sum, as set forth in the Contract. If the Construction Manager is notified in writing by the Bank, following the date of the execution of the Contract, of the Bank's intention to require such insurance, the Contract Sum, as set forth in the Contract, shall be increased by an amount equal to the Construction Manager's costs of furnishing such insurance. In either of the aforesaid circumstances, the Construction Manager shall be required to produce satisfactory evidence to the Bank of the cost of such insurance, as the Bank may require. The Bank, at its option, shall have the right to purchase and maintain other insurance to protect itself against claims which may arise out of or result from the actions and/or inactions of the Construction Manager, and/or any Subcontractors, with such other insurance being purchased by the Bank in excess of that provided by the Construction Manager hereunder.

8.3 PERFORMANCE BOND AND PAYMENT BOND

Insert the word "shall" in line 1 in between the words "Manager" and "furnish." in Paragraph 8.3.1.

Delete the last sentence in its entirety in Paragraph 8.3.1.

ARTICLE 9; MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION FOR THE PRECONSTRUCTION PHASE

Delete Paragraphs 9.1.1, 9.1.2 and 9.1.3 in their entirety and substitute with the following:

At the exclusive option of the Owner, all claims, disputes and other matters in question between the parties to this Contract, arising out of or relating to this Contract or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties agree otherwise. Any and all arbitration arising out of or relating to this Contract shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Contract to the extent necessary to the final resolution of the matter in controversy. This Contract to arbitrate and any agreement to arbitrate with an

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

additional person or persons duly consented to by the parties to this Contract shall be specifically enforceable under the prevailing arbitration law.

Insert the following new second and third sentences in Paragraph 9.1.4: "Any demand for arbitration made by any party other than the Owner shall not be binding on the Owner. Any demand for arbitration made by the Owner shall be binding on the Owner."

Delete Section 9.1.5 in its entirety.

Add a new Paragraph immediately after Paragraph 9.1.6:

9.1.7. At the Owner's option, the location for settlement of any and all claims, controversies or disputes arising out of or related to this Contract or any breach thereof whether by arbitration or litigation shall be New York, New York.

9.2 DISPUTE RESOLUTION FOR THE CONSTRUCTION PHASE

Delete in its entirety.

9.3.2 EXTENT OF CONTRACT

Delete the last sentence in its entirety.

9.3.4 GOVERNING LAW

Delete in its entirety and substitute with the following:

This Contract and the rights and obligations under this Contract shall be governed by and construed in accordance with the Federal law of the United States of America and, in the absence of controlling Federal law, in accordance with the law of the State of New York, notwithstanding New York's choice of law rules.

Add the following Paragraph 9.3.6:

Any notice or other communication required or permitted to be given or delivered under this Contract shall be in writing and shall be sufficiently given if delivered personally, which shall be required with regard to notices applicable to a material breach, or sent by telegram or cable, or mailed by first-class or overnight delivery mail, return receipt requested, postage prepaid, as follows:

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

To Owner:

Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045

Attention: Richard Prisco, Assistant Vice President, REGS

To Construction Manager:

Attn.: _____

Or to such other address or addresses as either party may from time to time designate to the other by written notice. Any notice shall be deemed to be given when received.

ARTICLE 10; TERMINATION OR SUSPENSION

Delete Paragraph 10.1 in its entirety and replace with the following:

OWNER'S UNRESTRICTED RIGHT TO TERMINATE: Notwithstanding anything in this Contract to the contrary, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate this Contract at any time at its sole discretion, with or without cause, without liability of any kind. In such event, the Owner shall only be obligated to pay the Construction Manager any Cost of Construction Manager's Services for services rendered prior to that time. Further, the Owner may assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions of the Construction Manager's Services to another Construction Manager acceptable to the Owner.

Delete Paragraph 10.2 in its entirety.

Delete Paragraph 10.3 in its entirety.

ARTICLE 11; OTHER CONDITIONS AND SERVICES

Add the following:

11.1 COMPLIANCE WITH OWNER RULES AND REGULATIONS: All services provided by and work performed by the Construction Manager shall be subject to and comply with all applicable provisions of the Owner's Main Building Rules and

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Regulations. Without limiting the foregoing, Construction Manager shall comply with, and Owner will bear no liability or cost for, the provisions which require the removal of any contractor or subcontractor which the Owner determines is responsible for a labor conflict or dispute that has interrupted or otherwise effected the operation of Owner or Owner services.

11.2 CONSTRUCTION MANAGER'S CONDITIONAL RIGHT OF ENTRY: Any person or persons designated by Construction Manager but subject to the reasonable approval of the Owner shall have the right to enter the Main Building during the Owner's business hours and upon notice to the Owner or any other reasonable time agreed to by the Owner and subject to the Owner's reasonable security arrangements and the provisions of the Contract for the purpose of performing obligations under this Contract. A reasonable, security-related denial or restriction of access by Owner either for security reasons or because of an operational requirement shall not constitute a breach of this Contract or affect Owner's rights or Construction Manager's obligations. Owner may conduct security investigations relating to Construction Manager personnel having access to Owner's facilities similar to investigations conducted with respect to Owner's own employees. Owner may request substitution of Construction Manager agents, employees and representatives for reasons relating to Owner security. It is understood that the person(s) designated by Construction Manager to have access to the Owner's premises will be Construction Manager's personnel, unless the Owner is notified and agrees to the contrary. The Contractor shall not provide individuals to the Bank who are unauthorized to work in the United States. The Construction Manager shall also indemnify the Bank for any penalties assessed against the Bank by the Immigration and Nationalization Service with regard to the knowing hiring of unauthorized workers, as well as any legal fees incurred by the Bank in defense of a related investigation by any branch of the United States Government.

11.3 MAINTENANCE OF RECORDS: The Construction Manager shall maintain and keep, for a period of at least six (6) years after the date of Final Acceptance, all records and other data relating to the Work. The Owner or the Owner's representative shall have the right to inspect and audit all records and other data of the Construction Manager relating to the Work.

11.4 DAVIS-BACON ACT: The Construction Manager and all Subcontractors shall be required to pay all laborers and mechanics employed or working upon the site of the Work the full amount of wage and fringe benefits due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor applicable to the class of work performed at the site of the Work. Although the Reserve Banks have taken the position that they are not legally subject to the Davis-Bacon Act and the implementing regulations, (40 U.S.C. § 276a *et seq.* and 29 CFR Part 5) this action is taken in recognition of the policy of the Act. The Construction Manager and all Subcontractors may not rely on the position of the Bank as a defense for noncompliance with the wage requirements of the Davis-Bacon Act.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

11.5 SMALL AND DISADVANTAGE BUSINESSES: To the extent consistent with the U.S. Court Decision in Adarand Constructors v. Pena, Owner has a policy of assisting small businesses and disadvantaged small business in participating in the performance of Owner's contracts. Construction Manager hereby agrees to carry out this policy in the awarding of subcontracts connected with this Contract to the fullest extent consistent with the efficient performance of this Contract. Construction Manager further agrees to furnish to Owner information demonstrating Construction Manager's compliance with this clause, upon request by Owner.

11.5.1 As used in this Contract, the term "small business" means a business qualifying as a small business concern under Article 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term "disadvantaged small business" means small business--

- (1) At least 51 percent (51%) owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent (51%) of the stock of the business is owned by one or more socially disadvantaged individuals; and
- (2) whose management and daily business operations are controlled by one or more such individuals. Construction Manager shall presume that socially and economically disadvantage individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and any other minorities, or any other individual found to be disadvantaged by the Small Administration pursuant to Article 8(a) of the Small Business Act.

11.5.2. Construction Manager, acting in good faith, may rely on written representations by its subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

11.6 FORCE MAJEURE: Neither party shall be liable for its failure or delay in performance of its obligations under this Contract due to strikes, wars, revolutions, fires, floods, explosions, earthquakes, statutes or government regulations, or other causes beyond its control.

11.7 JURISDICTION: The exclusive jurisdiction for any legal action or proceeding arising under this Contract shall be the United States District Court for the Southern District of New York, and the parties expressly submit to the jurisdiction of that court.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

11.8 SEVERABILITY: If any provision of this Contract is held invalid, illegal, or unenforceable, the remainder of this Contract shall not be affected thereby. If any portion of this Contract is held by a court of competent jurisdiction to conflict with any Federal, State, or local law or regulation, such portion of this Agreement is hereby declared to be of such force and effect as is permissible in such jurisdiction.

11.9 NO DISCLOSURE OF OWNER INFORMATION: Construction Manager acknowledges that any information regarding the Owner, including but not limited to, its operation, business practices, or security procedures obtained by Construction Manager, its agents or employees while performing the Agreement are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner's prior written consent.

11.10 ADVERTISING: Construction Manager shall not use the Owner's name or any adaptation or variation of the Owner's name in any advertising, promotional material, or other publication, or otherwise publicize or communicate Construction Manager's relationship with the Owner, without the Owner's prior written consent.

11.11 TAXES: Notwithstanding any provisions to the contrary, the Owner shall not be billed for or obligated to pay any taxes, including local, State or Federal sales, use or gross receipt taxes, from which the Owner, as a Federal Reserve Bank, is exempt pursuant to Section 7 of the Federal Reserve Act (12 U.S.C. § 531).

11.12 BACKGROUND INVESTIGATIONS: Because of the sensitive and confidential information about the Bank's business affairs, operation and security procedures which the Construction Manager may be given or have access to during the term of this Agreement, the Bank will conduct background investigations of the Construction Manager at the Construction Manager's expense. In the Bank's sole discretion, the Bank may conduct more than one such background investigation during the term of this Agreement and such investigations may include, but not be limited to, researching the Construction Manager's ownership, business history and record of ethical conduct. If (i) the Construction Manager fails to promptly cooperate with any such background investigations or (ii) the Bank determines, in its sole discretion, that the results of any background investigation are not satisfactory to the Bank, the Bank may, at its sole option, terminate this Agreement immediately and without any liability on behalf of the Bank, other than to pay the Construction Manager of any services that have been properly rendered under this Agreement as of the date of termination. In the event the Bank terminates this Agreement in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Construction Manager of the specific results of the background check or why the Bank deemed those results unsatisfactory.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

IN WITNESS WHEREOF, the parties have duly executed this Contract on the dates set forth below:

AGREED:

(CONSTRUCTION MANAGER)

[SIGNATURE]

[PRINT NAME]

[TITLE]

[DATE]

AGREED:

**FEDERAL RESERVE BANK
OF NEW YORK**

[SIGNATURE]

[PRINT NAME]

[TITLE]

[DATE]

EXHIBIT A

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A201

General Conditions of the Contract for Construction

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION
WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION*

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

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

1.1.2 THE CONTRACT

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

1.1.3 THE WORK

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

1.1.4 THE PROJECT

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

1.1.5 THE DRAWINGS

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

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equip-

ment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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

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

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

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the

Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.5 INTERPRETATION

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

ARTICLE 2

OWNER

2.1 DEFINITION

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the request of the Contractor, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. *[Note: Unless such reasonable evidence were furnished on request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work.]*

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, access-

ments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

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

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

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

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

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

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

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.8 ALLOWANCES

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

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- .2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- 3.9 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- 4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for

which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

3.12.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

3.12.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the

Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

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

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

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

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' 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) including loss of use resulting therefrom, but only to the extent caused in whole or in part by 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 Paragraph 3.18.

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

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Archi-

tect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former architect.

4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to arbitration.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Con-

tractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

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

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying

out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

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

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

4.3 CLAIMS AND DISPUTES

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

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

4.3.3 Time Limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.3.8 Claims for Additional Time

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

4.3.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data

substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.3.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5 ARBITRATION

4.5.1 Controversies and Claims Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.3.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.4.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 45 days have passed after a Claim has been referred to the Architect as provided in Paragraph 4.3 and no decision has been rendered.

4.5.2 Rules and Notices of Arbitration. Claims between the Owner and Contractor not resolved under Paragraph 4.4 shall, if subject to arbitration under Subparagraph 4.5.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.5.3 Contract Performance During Arbitration. During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 4.3.4.

4.5.4 When Arbitration May Be Demanded. Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) any of the five events described in Subparagraph 4.3.2.

4.5.4.1 When a written decision of the Architect states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.5.4.2 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.5.1 and 4.5.4 and Clause 4.5.4.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.5.5 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.5.6 Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

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

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

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

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

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

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

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

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

5.3 SUBCONTRACTUAL RELATIONS

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

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

5.4.2 If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

6.2 MUTUAL RESPONSIBILITY

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

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

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

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

6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

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

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

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

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

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

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

7.2 CHANGE ORDERS

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

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

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Subparagraph 7.3.6.

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

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

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

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

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8

TIME

8.1 DEFINITIONS

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

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

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

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

8.2 PROGRESS AND COMPLETION

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

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

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

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

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

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

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

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the

Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

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

9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

9.6 PROGRESS PAYMENTS

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

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

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

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

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

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

9.8 SUBSTANTIAL COMPLETION

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

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or desig-

nated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make

such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations 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 said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in Subparagraph 4.3.5.

9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 4.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, 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) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner 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 Subparagraph 10.1.4.

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.3 and 10.2.1.5 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

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

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 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 from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally 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:

- 1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the Initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity

other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.3.1.1 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

11.3.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

11.3.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.3.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.3.7 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

11.3.7 **Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, 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 perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.9 If required in writing by a party in 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, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.5. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Paragraph 4.5. The Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.3.11 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

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

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

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

12.2.2 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 Subparagraph 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 unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

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

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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

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

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

13.3.1 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 to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

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

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

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures.

The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

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

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

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

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

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

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

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- 1** issuance of an order of a court or other public authority having jurisdiction;
- 2** an act of government, such as a declaration of national emergency, making material unavailable;
- 3** because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- 4** if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or
- 5** the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

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

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify

tify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

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

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the

Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

14.3.2 An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

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

14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

EXHIBIT A
FEDERAL RESERVE BANK OF NEW YORK
SUPPLEMENTARY CONDITIONS

The following Supplementary Conditions modify the "General Conditions of the Contract for Construction," AIA Document A201, Fourteenth Edition, 1987. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. In the event of any inconsistency between the Supplementary Conditions and the General Conditions, the Supplementary Conditions shall govern. The entire contract between the parties shall consist of the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, AIA Document A121/CMc and Document 565, 1991 Edition, dated _____ between _____ (the "Contractor" or "Construction Manager" or "CM") and the Federal Reserve Bank of New York ("Owner" or "Bank") as amended by the Bank for this Project (as amended the "Agreement" or "AIA A121"), the AIA Document A201, Fourteenth Edition, 1987 as it may be amended by these Supplementary Conditions for this Project (as amended, "AIA A201"), any Addendums, and the Contract Documents (as such term is defined in Subparagraph 1.1.1 below) (together, the "Contract"). To the extent that any provisions of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of the Project and the Owner shall prevail.

ARTICLE 1. GENERAL PROVISIONS

1.1.1 The Contract Documents

Paragraph 1.1.1: Delete the first sentence and replace it with:

The "Contract Documents" means the Contract, together with all Modifications thereto, the Construction Documents and Specifications and the Exhibits to this Contract listed in Subparagraph 1.0.1 of the Agreement, which are attached thereto or deemed to be incorporated in this Contract as they are developed. The Contract Documents constitute the entire agreement between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents do not include any bidding documents, such as any advertisements or invitations to bid, any instructions to bidders, any requests for proposals, any sample forms, any contractor or subcontractor bids or portions or addenda relating to these or any other documents, unless otherwise specifically enumerated in this Contract.

Add the following Subparagraph 1.1.1.0:

The intent of the Contract Documents, once they are seventy-five percent (75%) complete or greater, is to include all items reasonably necessary for the proper execution and completion of the Work. The drawings and specifications are mutually reciprocal and complementary. Whatever is required by any one shall be as binding as if called for by

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all. Where conflicts occur between information stated or shown on the Contract Documents, the Architect shall determine the course of action to be followed by the Contractor. The more expensive method, the better quality, or greater quantity of material, shown, specified, or required, shall govern unless the Architect directs otherwise. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.1.3 The Work

Add the following sentences at the end of the existing Paragraph 1.1.3:

Without limiting the foregoing, "Work" shall have the meaning that is defined in Article 1.1.3 of AIA A201 and shall include in general, but is not limited to, the following: any construction and services required by the Contract Documents as well as any services necessary for restoration/renovation of the 10th and 11th floors at the Bank's Main Building ("Main Building") located at 33 Liberty Street, New York, New York. The Work shall include all supervisory personnel; labor; materials; tools; supplies; equipment; additional services; scaffolding; transportation; licenses; etc., as well as any other methods of construction necessary for the Project completion required of the Construction Manager by the Contract Documents as further defined by the Guaranteed Maximum Price ("GMP") when accepted by the Owner, even items or services which are not specifically stated in the Contract Documents, but which are required under standard construction practices for this type of construction or can be reasonably inferred for a construction project of this nature; such items shall be assumed to be included in the scope of the Work. The Work shall also encompass any task or service that is required for the Construction Manager to turn over to the Owner a complete and quality finished construction project including all required permit signoffs and inspections from any authorities having jurisdiction. The Work may constitute the whole or a part of the Project.

1.1.4 The Project

Add the following to the end of Paragraph 1.1.4:

Without limiting the foregoing, "Project" shall include the overall undertaking in which the Architect, Owner, Construction Manager and others will participate to complete the necessary construction required for restoration/renovation of the 10th and 11th floors of the Main Building. The Project shall include services required under the Contract (all phases), including the performance and completion of the Work, as well as the services required by the Architect and any other consultants or contractors the Owner may engage to assist in the completion of the Work and any tasks associated with the Project.

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1.1.5 The Drawings

Add the following Subparagraph 1.1.5.0:

Every copy including all originals of Drawings, Specifications, and Shop Drawings for any portion of the security system, vaults or other storage areas for valuable property shall be delivered to Owner upon Final Completion of the Work or other termination of the Contract. No such Specifications, Drawings or Shop Drawings shall be copied or duplicated without Owner's prior written approval. Each copy of such Specifications, Drawings and Shop Drawings shall be serially numbered and Contractor shall maintain a list, by number of the recipient of each such document. Notwithstanding anything in this Agreement to the contrary, the Contractor acknowledges and agrees that the Bank considers any drawings, specifications, plans, or other similar documents, in no matter what form they may exist, that are related in any way to the Bank's layout, design, or construction ("Plans") to be very sensitive for security reasons. The Contractor further acknowledges and agrees that it shall maintain any Plans furnished by the Bank in connection with this Agreement or otherwise obtained by the Contractor in a strictly confidential and secure manner. The Contractor shall share, provide, or otherwise disclose Plans only to the Contractor's employees, agents, and subcontractors and only on a strictly need-to-know basis and shall ensure that such employees, agents, or subcontractors maintain any Plans that are disclosed to them in a strictly confidential and secure manner. At the conclusion of the Project or other termination of this Agreement, the Contractor shall promptly return any and all Plans to the Bank, including any Plans that it has shared with, released to, or otherwise provided to any third party.

1.2 Execution, Correlation and Intent

Add the following to the end of subparagraph 1.2.1:

The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor.

Insert the following after the word "Documents" in line one of Subparagraph 1.2.3.0 "once they are seventy-five percent (75%) complete or greater,"

ARTICLE 2. OWNER**2.2 Information and Services Required of the Owner**

Delete Subparagraph 2.2.1 in its entirety.

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ARTICLE 3. CONTRACTOR

3.1 Definition

Delete the first sentence of Subparagraph 3.1.1 and replace it with the following:

The Contractor is the person or entity identified as Construction Manager in the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor (AIA Document A121/CMc and Document 565, 1991 Edition), dated _____ between _____ and the Bank, inclusive of its rider, and is referred to throughout the Contract Documents as if singular in number.

3.2 Review of Contract Documents and Field Conditions by the Contractor

Add the following Subparagraph 3.2.4:

If the Owner determines, in its sole discretion, that the Contractor is unnecessarily submitting Requests For Information ("RFI") and by this is disrupting the progress of the Work and/or the Project, the Owner will so notify the Contractor in writing. After Owner provides such notification, the Contractor shall reimburse the Owner for all costs associated with Architect's analysis and response for any further RFI's if the Owner, in its sole discretion, determines that the information required to "answer" the RFI is contained within the Contract Documents.

Add the word "Sub-subcontractors" after the word Subcontractors in line 2 of Subparagraph 3.3.2.

Add the following Subparagraph 3.3.5:

The Contractor and not the Owner shall be responsible for determining the point at which the work of one subcontractor terminates and that another subcontractor commences.

Add the following Subparagraph 3.3.6:

All arrangements for shutdowns of active and standby systems, tie-ins, tests, use of elevators, loading docks, cranes, lifts, any existing building system, as well as any work effort of the Contractor shall be in conformance with the Main Building's rules and regulations. The costs for any resulting overtime shall be included in the Contractor's General Conditions.

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Add the following Subparagraph 3.3.7:

It shall be the Contractor's responsibility under the Contract to convey equipment, machinery, materials, and any other items required for completion of the Work, into the building/roof/work area, and as necessary through the building to the designated or required location. The Contractor shall use appropriate conveying methods dictated by the size, weight, and other governing characteristics of the items being conveyed. Where special equipment (such as sidewalk lifts, cranes, or similar items) is required, such equipment shall be included under the Cost of the Work and any costs to the Construction Manager for the supervision or administration of such work shall be included in the cost of the General Conditions. Where it is necessary to remove exterior windows, partitions, doors, piping, ducts, conduit, and any other items of building construction in order to convey the materials, equipment, machinery, etc. into/out of/ or onto the building and to the final destination, such items shall be removed and replaced under the Contract. Replaced items shall match removed items in all respects. Interrupted systems shall be restored to their original state. In addition, it shall be the Contractor's responsibility under the Contract to protect all building surfaces, materials, equipment, finishes, etc. in the path of the conveying operations. Such protection shall be constructed of materials adequate for their intended usage, and acceptable to the Owner regarding appearance and adequacy of the protective measures. Reasonable measures shall be taken to protect Main Building grounds, including existing landscaping.

Add the following Subparagraph 3.3.8:

The Contractor will be limited in the storage of materials and equipment required for the project to areas of work on the floor level of the building where work is to be performed, or such other area(s) as designated by the Owner, and shall place upon any area of the building only such loads as are consistent with the structural capability and safety of such areas.

Add the following Subparagraph 3.3.9:

Work areas for the Contractor and his subcontractors shall be restricted to the area of work.

Add the following Subparagraph 3.3.10:

Space for Contractor's temporary facilities shall be provided on Main Building grounds.

Add the following Subparagraph 3.3.11:

The Contractor, all workmen and other persons requiring access to the area of work for any purpose in connection with the contract Work will be required to enter the grounds by way of the designated checkpoint, and shall report to the Protection Division, to obtain

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clearance and an escort or identification badge or ID card permitting them enter the designated work zone. Permission to remove from the premises all packages, tools, tool boxes and lunch boxes will require a building pass and clearance from the Protection Division in each instance.

Add the following Subparagraph 3.3.12:

To facilitate keeping the premises in clean and orderly condition during progress of the work, the Contractor shall provide and maintain sufficient metal receptacles within the areas of work for temporary placement of rubbish by persons employed by the Contractor.

Add the following Subparagraph 3.3.13:

To the extent applicable to Work under the Contract, the Contractor and each of his subcontractors in execution of the Work shall comply with Rules and Regulations of the Occupational Safety and Health Administration (OSHA) United States Department of Labor under authority established by the Occupational Safety and Health Act of 1970 and all amendments to date of Contract signing.

Add the following Subparagraph 3.3.14:

Methods and paths for delivery and storage of materials to be used in the Work, workers travel, and for removal of materials and debris resulting from the Work, in addition to the specific requirements in connection therewith called for elsewhere in the Specifications, shall be subject to Owner's approval.

Add the following Subparagraph 3.3.15:

The Contractor shall provide all temporary scaffolding, bridges, hoists, derricks, ladders, barriers at open shafts, and other devices for protection of the workers and the public; and other similar items. The Contractor shall provide temporary dust-tight/environmental partitions and/or protective barriers in the building to completely enclose the area, floor, or level where alteration work, or related work is performed at any location. All such items shall comply with applicable laws and labor regulations; and shall be promptly removed from the site when their use is no longer required for execution of the work.

Add the following Subparagraph 3.3.16:

Existing alternating-current electricity to be used for temporary power and temporary lighting required by the Contractor will be available for the Contractor's use at sources designated by the Owner. The Contractor will be required to provide, install and maintain temporary wiring and outlets required by the job, from the sources made available to the points of use; and such wiring shall conform to requirements of all governing electrical codes and regulations. The Owner will furnish electrical energy used

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by the Contractor at no cost to the Contractor; however, care shall be exercised so as not to waste electricity and not to overload electric circuits and panels. All costs associated with the maintenance of full time temporary light and power, including any stand-by personnel, shall be included in the GMP proposal.

Add the following new Subparagraph 3.3.17:

Details of how and when the various parts of the Work shall be delivered to Main Building and performed at the building shall be worked out by the Contractor, and mutually agreed upon by the Owner, Contractor and the Architect prior to commencement of work to the extent practicable, and while the Work is being performed. The Owner or the delegated representative in each case shall be given adequate notice by the Contractor before actual work in any part of the building is started.

Add the following new Subparagraph 3.3.18:

Where the staging (phasing) of a project is such that certain mechanical, electrical or other systems will be put in operation for beneficial use by the Owner prior to completion of the entire project; and where such condition requires the use of standby personnel, the cost for such personnel shall be included in the contract amount to provide for operation of the systems twenty-four (24) hours per day and seven (7) days per week.

Add the following new Subparagraph 3.3.19:

The Contractor before commencing work, shall verify all governing dimensions and other conditions at the premises, including any obstacles, and shall examine all adjoining work on which their work is in any way dependent. The Contractor shall not be relieved of responsibility for defective work arising out of defective adjoining work unless notice of such defective work has been filed by the Contractor and acceded to in writing by the Architect before any part of the Work in question is commenced. Requests for additional payments at a later date due to any "unforeseen" conditions which could be observed at the site will not be allowed.

3.4 Labor and Materials

Add the following Subparagraph 3.4.3 to 3.4:

3.4.3 Substitutions:

3.4.3.1 The materials, products and equipment described in the Contract Documents establish the standard of required quality, function, dimension appearance, durability, performance and manufacturer's warranty, technical resources and engineering support, as determined by the Architect.

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3.4.3.2 Substitution requests, except where delineated as a "no substitution" item in the contract documents, will be considered only if standards are met or exceeded as described above and the Contractor specifically states that the substitutions shall be requested in the original proposal and the substitution is subsequently approved by the Owner.

3.4.3.3 Each substitution request shall include the name of the material, product or equipment item for which substitution is requested and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for a complete evaluation.

3.4.3.4 A statement setting forth any changes in other materials, products, equipment or other Work that incorporation of the substitution would require, shall be included.

3.4.3.5 The burden of proof of the merit of the proposed substitution is upon the proposer.

3.4.3.6 The Architect's decision of approval or disapproval of a proposed substitution shall be final and will be set forth in a written addendum.

3.4.3.7 Contractor shall not rely upon approvals made in any other manner.

3.4.3.8 Contractor's Responsibilities: If any of the following conditions occur due to substitutions, the Contractor making the substitution shall bear the cost of such conditions, including payment for services rendered by the Architect:

- a) Redesign required for any new or existing portion of the Work.
- b) Materials or quantity changes for any portion of the Work.
- c) Delays in any portion of the Work.

3.5 Warranty

Add the following to the end of Subparagraph 3.5.1:

The Owner's enforcement of any warranty or guarantee given by the Contractor shall not deprive the Owner of any other rights or remedies the Owner may otherwise have.

3.6 Taxes

Delete Subparagraph 3.6.1 in its entirety and substitute the following:

3.6.1 The Contractor understands and agrees that, in view of the Owner's exemption from state and local taxes, unless otherwise directed and approved by the Owner in writing, all supplies, materials, and equipment to become integral component parts of the

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Project shall be purchased by the Contractor, the Subcontractor or Sub-subcontractors, as the case may be, in such a manner that there will be neither local nor New York State and/or New Jersey sales or compensating use taxes incurred in respect of supplies, materials and equipment purchased to become integral component parts of the Project. Payment for such supplies, materials and equipment shall be made in accordance with the provisions of this Contract.

3.6.2 In the event the Contractor cannot purchase supplies materials or equipment to become integral component parts of the Project and obtain delivery therefor without payment of a sales or use tax, Contractor shall notify the Owner immediately and shall not make any such purchase without prior written approval of the Owner in each instance.

3.7 Permits, Fees and Notices

Delete Subparagraphs 3.7.1, 3.7.2, 3.7.3, and 3.7.4 and substitute the following:

3.7.1 The Contractor shall not make any application or give any notice to any local or state governmental body or agency therefor for any permit, approval, or license required under applicable law or regulation in connection with the Work without prior written notification to the Owner and authorization in each instance.

3.7.2 The Contractor shall inform the Owner, in advance, of each notice or report to be given or posted or permit, approval or license to be obtained, in order to comply with all applicable laws and regulations relating to the performance of the Work. If the Contractor performs any Work contrary to such applicable laws and regulations, then the Contractor shall assume full responsibility therefore, shall commence any necessary correction of Work promptly after notification by the Owner, shall complete such corrective work as soon as is consistent with good workmanship and shall hold the Owner harmless against any loss as a result of the performance of Work contrary to applicable laws and regulations.

3.7.3 All recommendations of the National Fire Protection Association and the National Board of Fire Underwriters to the extent applicable to the work under the contract are hereby made a part of the specifications and the Contractor shall be responsible for compliance with their provisions.

3.9 Superintendent

Add the words "Project Manager and" preceding the title of section 3.9

Add the words "Project Manager and" before the word superintendent in line 1 of Subparagraph 3.9.1

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Add the words "Project Manager and" before the word superintendent in line 3 of Subparagraph 3.9.1

Add the words "Project Manager and" before the word superintendent in line 5 of Subparagraph 3.9.1

3.10 Contractor's Construction Schedules

Delete the first sentence of Subparagraph 3.10.1 in its entirety and replace with:

The Contractor shall use the agreed upon schedule approved by the Owner and Architect defined as the approved schedule in the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor (AIA Document A121/CMc and Document 565, 1991 Edition), dated _____ between the Construction Manager and the Bank, inclusive of its rider; and this "General Conditions of the Contract for Construction," AIA Document A201, Fourteenth Edition, 1987, inclusive of its rider.

3.11 Documents and Samples at the Site

Add the following Subparagraph 3.11.2:

The Contractor shall permit the Owner, or an auditor appointed by the Owner, to have access at all reasonable times to all records, correspondence, account books, invoices, payrolls, and other records relating to the Contract, to the premises and to the construction work for the purpose of checking the cost of work, ascertaining the progress, and inspecting the character of the Work. For these purposes the Contractor shall preserve all records for a period of ten (10) years after the final payment.

3.12 Shop Drawings, Product Data and Samples

Add the following to the end of Subparagraph 3.12.5:

No claim for extra cost or for extension of Contract time will be granted to the Contractor by reason of the Contractor's or his subcontractor's failure to submit shop drawings and/or samples in a timely manner.

Add the following Subparagraph 3.12.7.1:

Shop Drawings submitted for the Architect's review shall be numbered consecutively and, insofar as practicable, shall be uniform in size. Drawings shall indicate all necessary dimensions pertaining to construction and erection; including manufacturer's recommended clearances for access and maintenance of all equipment; arrangement and sectional views; complete details including relationship and connection with adjoining

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work or other trades; kind of materials, thickness, and finish. Should manufacturers recommended clearances not be indicated on shop drawings and proper clearances not provided in the complete installation, the Contractor shall modify installed work to provide proper access and clearance at no additional cost to the Owner.

Add the following Subparagraph 3.12.7.2:

Prior to submittal, the Contractor shall thoroughly check Shop Drawings of his subcontractors for accuracy, to see that work contiguous with and having bearing on work shown on the Shop Drawings is accurately and clearly shown and that the indicated work complies with the contract requirements. Shop drawings shall be checked by the Contractor against actual field conditions, including dimensions of existing conditions, prior to submittal. Shop drawings found to be inaccurate or in error by the Contractor shall be returned to his subcontractor for correction before submittal to the Architect. Shop Drawings shall bear evidence in the form of a review stamp bearing the date and the reviewer's name or initials that such drawings have been checked by the Contractor for conformance with the requirements stated above; and his approval noted thereon.

Insert the following to Subparagraph 3.12.8 at the end of the sentence in line 7:

If no specific mention is made by the Contractor of additional cost requirements at the time the Shop Drawings are submitted, requests for additional costs for the item(s) covered by the Shop Drawings will not be considered at a later date.

Delete Subparagraph 3.12.11 in its entirety.

Add a new Subparagraph 3.12.12:

One reproducible transparency and three blue and white print copies shall be submitted of each Shop Drawing until final review is obtained. One of the three blue and white Shop Drawing prints shall be submitted to the Owner. Each Shop Drawing shall have a clear space large enough for Architect's review stamp. Shop Drawings submitted without reproducible transparency will be returned without being reviewed.

1. After completion of checking, the Architect will obtain a print or prints of each transparency for his records and return the transparency to the Contractor.
2. Of the Shop Drawings returned "Resubmit," "Make Corrections Noted," "Submit Specified Item," or "Rejected," the original drawing shall be corrected, a new transparency and two prints made and resubmitted until final review is obtained.

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3. Of Shop Drawings returned "No Exception Taken," the Contractor shall obtain and distribute such number of prints as required for field distribution to all trades performing work adjoining or related to the work or item represented by the Shop Drawings. A copy of all final reviewed Shop Drawings shall be kept at the site by the Contractor, available at all times for examination by the Owner and the Architect and turned over to the Owner in final system turnover packages.

Add a new Subparagraph 3.12.13:

Eight (8) copies shall be submitted of manufacturers descriptive data including catalogue sheets for materials, equipment and fixtures, showing sizes, dimensions, performance characteristics, and capabilities, wiring diagrams and controls, schedules, and other pertinent information as required. Where printed data describe more than one product or model, the product and all features which are to be furnished shall be clearly identified. Two copies of submissions, stamped either "No Exception Taken," "Make Corrections Noted," "Resubmit," "Submit Specified Item," or "Rejected," will be returned to the Contractor after being reviewed. Eight (8) copies of items requiring resubmittal shall be submitted with the required corrections.

Upon completion of the Work, the Contractor shall provide the Owner with three sets of digital files on CD-ROM disks of the final versions of the above. The cost of digitizing the files and preparation of the CD-ROMs may be included in the Subcontract Costs.

Add a new Subparagraph 3.12.14:

When Shop Drawings indicate changes which may be acceptable, and such changes affect other related work or the work of other trades, the Contractor shall assume the responsibility and cost of all such related changes and/or charges at no additional increase to the GMP.

Add a new Subparagraph 3.12.15:

During progress of the work the Contractor shall keep a careful record of all changes and corrections from layouts shown in the Contract Drawing, in the installation of equipment, ducts, supply and return outlets, piping, electric conduit, boxes and outlets, circuit panels and other mechanical or electrical service items.

Add a new Subparagraph 3.12.16:

Soon after commencement of work at the Owner's premises, the Architect will furnish to the Contractor, at the Contractor's expense, one set of the Contract Drawings on sepia transparencies or other reproducible media, and one set of computer diskettes containing digital files of the pertinent construction documents. These prints and computer files

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shall be kept at the site in the custody of an authorized representative of the Construction Manager, unless otherwise directed. On these prints and computer files all changes and revisions to the installations as shown shall be recorded by the Contractor as they occur. Upon completion of the Work, the Contractor shall revise the digital drawing files on the computer disks to reflect all "As Built" conditions, identify the computer files as "As Built" and forward them to the Architect, along with two plots of all the completed "As Built" drawings, for review. No final Certificate for payment will be issued, no retention reduced for the Trade involved, until such files have been received and determined to be satisfactory by the Architect and accurately show the "As Built" conditions. The costs associated with submission of "As Built" drawings may be included in Subcontract Costs, however, it will be the responsibility of the Contractor to see that all "As Built" drawings are completed to the satisfaction of the Architect. If any of the Subcontractors fail to meet any of the requirements of this section, the Construction Manager shall bear all costs associated with providing the required "As Built" drawings. The software application shall be as directed by the Owner. The Contractor shall be responsible for conveying the information in a virus-free format.

Add a new Subparagraph 3.12.17:

Where installation changes are made to conform with Instruction Sheets issued by the Architect, such changes shall be incorporated on the black and white Record print and computer disk. Changes in installation from that shown on Instruction Sheets shall also be recorded on the black and white print of the Instruction Sheets and all computer disks.

Add a new Subparagraph 3.12.18:

"Near completion of the Work, the Architect will furnish the Contractor with a complete set of contract drawings on reproducible prints, photographic process "MYLAR WASHOFF, RIGHT READING," the cost of which shall be paid for by the Contractor. All corrections noted on prints referred to above are to be drawn legibly on the mylar film and delivered to the Architect. Final Certificate for payment will not be issued; nor will retention be reduced for the TRADE involved, until such reproducibles and two sets of black line prints ON COPY-TUFF (NO TEAR) DOUBLE MATT 4 MIL WHITE OPAQUE HIGH CONTRAST FILM and one set of CD-ROMS, in a format acceptable to the Owner with all changes indicated, have been received by and determined to be satisfactory by the Architect. Costs for all prints and CDs shall be paid for by the contractor.

3.13 Use of Site

Add the following subparagraphs:

3.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from the Owner before using any portion of the Site.

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3.13.3 The Contractor agrees to reimburse the Owner for any expense or loss without additional increase to the GMP that the Owner may incur by being deprived of any use of the project or portion thereof by reason of any Work which is defective, or other than that specified, or does not perform the function for which it was designed, and will reimburse Owner for any expense in connection with any damage done to any property by reason of any of said causes, or by reason of the removal and replacement of Work done by the Contractor, the Subcontractors, the Sub-subcontractors or the Suppliers.

3.13.4 As a basis of the Contract, all work at the Owner's premises shall be performed within normal working days and hours of the various building trades employed for work under the Contract, except for any disruptive work and shut-downs or as otherwise required by Contract Documents or for deliveries required to be made on over-time. The Owner must approve any work not within normal days and hours but such approval will not be unreasonably withheld. The Owner shall not pay the Contractor for the cost of any overtime work unless such overtime work has been expressly authorized by the Owner in writing. If the Owner has so authorized the Contractor to perform such overtime work, the Owner shall pay the Contractor, in addition to the amounts it would otherwise hereunder have paid the Contractor for such work, the cost of such overtime work.

3.13.5 Where the Contractor is required to make deliveries where such deliveries are required to be delivered on weekends or after regular hours due to local law or traffic requirements; or where deliveries are required to be made on overtime for any reason whatever, all costs for such overtime shall be included in the GMP.

3.13.6 The Contractor shall perform the Work in a manner which will minimize shutdowns of existing operating items or systems. This includes items or systems on standby, *i.e.*, UPS or Emergency power system. When performance of the Work requires the shutdown of any existing operating item or system, the Contractor shall submit to the Owner, no later than four weeks from the date of this Contract, a detailed listing of these required shutdowns, which shall include a complete description of the work, the trades involved, the expected duration of the shutdowns, and the time frame in which the Contractor would like to perform this work. After receipt of the complete shutdown list and as dates for system shutdowns become available, the Owner will forward to the Contractor dates on which the shutdown work may be performed. Such shutdowns shall take place only when the Contractor has obtained prior written authorization for the shutdown from the Owner, has confirmed the schedule of this shutdown in writing at least five working days in advance of the work, and meets all requirements of Article 3.3.17 as amended. All shutdowns including, but not limited to, those required for or by the Work of Heating, Ventilating and Air Conditioning, Plumbing, Electric, or other Systems, shall be performed on overtime, including testing of Work installed or altered by any trade. All shutdowns, tie-ins, tests, etc. shall be in conformance with the Owner's Building rules and regulations. The costs for all such overtime shall be included in the GMP.

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Add the following to the end of Subparagraph 3.14.1.

This includes any cutting, removing, patching, and/or replacing of existing systems, slabs, floors, walls, ceilings, finished surfaces, conduits, ducts, piping, cables etc. Patching and replacement of any of the above shall match existing construction and finishes in all respects, as judged by the Architect, and all systems shall be restored to their original function without impairment and to their original quality.

3.16 Access to Work

Delete Subparagraph 3.16.1 and replace with the following:

The Owner, the Architect, and the representative of either of them shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access so the Architect and Owner may perform their functions under the Contract Documents.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT

4.1 Architect

Add the following sentence to the end of Subparagraph 4.1.1:

For the purposes of this Project, the Project Engineer and Project Architect shall have the same meaning and shall be considered interchangeable.

Delete Subparagraph 4.1.2 and replace with the following:

4.1.2 The Architect has the authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise provided by written notice from the Owner to the Architect and the Contractor. All of the Owner's instructions to the Contractor shall be issued through the Architect unless the Owner determines otherwise.

Delete Subparagraph 4.1.4 in its entirety.

4.3 Claims and Disputes

In Subparagraph 4.3.2, lines 5 and 11, insert the words "as provided for in Subparagraph 4.5" in between the words "arbitration" and "or."

In Subparagraph 4.3.4, line 2, insert the words "as provided for in Subparagraph 4.5" in between the words "arbitration" and "unless."

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4.4 Resolution of Claims and Disputes

In Subparagraph 4.4.4, line 6, delete the words "but subject to arbitration" and replace with the words "unless subject to arbitration as provided for in Subparagraph 4.5."

4.5 Arbitration

Delete Subparagraph 4.5.1 in its entirety and replace with the following:

At the exclusive option of the Owner, all claims, disputes and other matters in question between the parties to this Contract, arising out of or relating to this Contract or the breach thereof not resolved under Paragraph 4.4, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties agree otherwise. Any and all arbitration arising out of or relating to this Contract shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Contract to the extent necessary to the final resolution of the matter in controversy. This Contract to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Contract shall be specifically enforceable under the prevailing arbitration law.

In Subparagraph 4.5.2, delete the phrase "Rules and" from the title, delete the first sentence in its entirety and add the following to the end thereof:

Any demand for arbitration made by any party other than the Owner shall not be binding on the Owner. Any demand for arbitration made by the Owner shall be binding on the Owner.

Delete Subparagraph 4.5.5 in its entirety.

Add a new Subparagraph 4.5.8:

4.5.8 Location of Dispute Resolution. At the Owner's option, the exclusive location for settlement of any and all claims, controversies or disputes arising out of or related to this Contract or any breach thereof whether by arbitration or litigation shall be New York, New York.

ARTICLE 7. CHANGES IN THE WORK

Add the following to the end of Subparagraph 7.1.3:

At the request of the Architect, the Contractor shall promptly prepare and submit, to the Architect, a cost estimate for any changes or proposed Changes in the Work and any contract time adjustment required by this change. This estimate shall include an itemized

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listing of quantities and cost associated with the Changes in the Work and shall be limited to those elements listed in Articles 7.3.6.1, 7.3.6.2, 7.3.6.3, 7.3.6.4, as amended. All costs associated with Changes in the Work shall be adjusted as part of the Change Order. No adjustments to the Contract Sum pertaining to that specific change will be made after a Change Order has been executed.

In the last line of Subparagraph 7.1.4 delete "or Contractor."

Add the following Subparagraph 7.1.5:

Any substitutions for specified materials, equipment, or systems proposed by or through the Contractor shall be effected only upon approval and authorization by the Owner and Architect through the issuance of a Change Order. Upon such issuance, the substitution shall become part of the Contract Documents as if specifically incorporated therein by the Architect or its consultants.

7.2 Change Orders

Add the following to the end of subparagraph 7.2.1.3:

Any adjustment in time resulting from a change shall be included in the Change Order pertaining to that specific change. Claims for adjustment in time due to a change will not be considered after the Change Order for such change has been approved. Change order requests must be submitted in a pre-approved format to the Engineer with copies to the Bank. The CM shall not proceed with any Change Orders prior to written approval by the Engineer and the Bank. The CM shall include detailed material and labor breakdowns for each trade included in the Change Order. Any work started without approval by the Engineer and Bank shall be completely removed at no additional cost to the Bank. All Change Order requests shall reflect any impact to the Project schedule. The CM shall maintain a Change Order log that is updated weekly and issued prior to the Project meeting.

In subparagraph 7.2.2 insert in the second line between the words "Sum" and "may" the words "shall be by cost proposal or"

Add the following Subparagraph 7.2.3:

Cost proposals shall contain sufficient information concerning quantities, materials, prices, labor and similar pertinent data in a sufficiently detailed format to permit intelligent evaluation by Architect and Owner. Where cost proposals include work by Subcontractors, the detailed information pertaining to the work including the Subcontractor's total cost for his part of the work, shall be submitted by each Subcontractor involved. The information submitted by Subcontractors shall be contained on an estimating sheet, in a letter or other appropriate form, which shall be imprinted with

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the name, address and telephone number of the Subcontractor submitting the quotation. All such pertinent "back-up" information shall accompany all of the Contractor's cost proposals.

7.3 Construction Change Directives

Delete Subparagraph 7.3.6.5 and add the following Subparagraphs after Subparagraph 7.3.6.4:

.5 MARK-UP ON ADDITIONAL WORK

Subcontractors and Subordinate Subcontractors shall be limited to, and agree to perform, any additional work which may be ordered in accordance with the General Conditions of the Contract for the net cost of materials and labor (including wages paid, Payroll Taxes, Worker's Compensation and all of the insurance) plus the following percentage of this amount for all their overhead and profit:

- a) _____ percent (%) on additional work and supervision performed by the direct forces of the Subcontractor in question.
- b) _____ percent (%) on work performed by a trade contractor or supplier subordinate to the Subcontractor in question.

.6 The percentage to be added for any work change involving both added work and omitted work shall be applied to the net difference in cost.

.7 The percentage fees as indicated herein shall also apply to Subparagraph 7.3.3.

.8 Nothing in this Article shall excuse the Contractor from proceeding with the extra Work as directed by the Owner.

ARTICLE 8. TIME

8.2 Progress and Completion

Add a new Subparagraph 8.2.2.1:

Meetings shall be held periodically as requested by the Architect, at a designated place in the building, at which time representatives of the Contractor shall be present to discuss all details relative to the progress of the Work. The Contractor shall arrange for and conduct these meetings, shall record the proceedings, and shall furnish typed copies of the minutes of such meetings to the Owner, Architect and project team.

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Add a new Subparagraph 8.2.3.1:

Should the work not proceed according to the established detailed Project schedule, the Owner reserves the right to direct the Contractor to provide extra manpower or overtime at no additional cost to the Owner.

ARTICLE 9. PAYMENTS AND COMPLETION

9.3 Applications for Payment

In Subparagraph 9.3.1, line 1, delete "ten" and insert in its place "fifteen."

Add the following to the end of Subparagraph 9.3.1:

Each item listed in the application for payment shall have a separate amount for labor and a separate amount for material and other costs.

Add the following Clause 9.3.1.3 to 9.3.1:

9.3.1.3 Until the Work is certified by the Architect to be substantially completed, the Owner shall pay ninety percent (90%) of the amount due the Contractor on account of progress payments which shall include amounts of any approved Change Orders. When the work under the contract has been substantially completed, and certified by the Architect, the Owner may pay to the Contractor such additional amount on account of the Work as shall be necessary to bring the aggregate of all payments made by the Owner to the Contractor to an amount equal to ninety-five percent (95%) of the Contract Sum. The Owner may reinstate or alter retention at any time and at any percentage. The Owner may make payment, at its discretion, for each Application for Payment in the form of separate checks for the Contractor and for each of the Subcontractors in the amount shown for those trades in the application, and as certified payable by the Architect's Certificate for Payment.

Checks for Subcontractors shall be made payable jointly to the Contractor and the Subcontractor. All such checks shall be given to the Contractor for his distribution to the Subcontractors.

Delete Subparagraph 9.3.3 and replace with the following:

The Contractor represents and warrants that title to all Work, including, without limitation, supplies, materials and equipment, whether incorporated in the Project or not, will pass to the Owner upon delivery to the site, free and clear of all chattel mortgages, conditional sales agreements, security interests, financing statements and any other liens,

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claims, or encumbrances, all of which are hereafter referred to in this Article 9 as a "lien" or "liens"; and that no Work, including without limitation, supplies, materials or equipment will be acquired subject to any lien or liens.

In Subparagraph 9.7.1, line 6, delete "or awarded by arbitration."

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

Delete Subparagraphs 10.1.2, 10.1.3 and 10.1.4 in their entirety and insert the following subparagraphs:

10.1.2 In the event that Contractor encounters asbestos unexpectedly, Contractor agrees that it has full responsibility to protect and to have provided for the safety of his personnel and personnel in the area through adequate precaution, preventative measures and training and shall indemnify Owner, Architect and their employees and agents against any claim, damage, loss or expense (including attorney's fees) attributable to bodily injury, sickness, disease or death resulting from contact with or work in the vicinity of asbestos.

10.1.3 In the event Contractor does encounter asbestos unexpectedly, Contractor shall give prompt written notice to the Owner and Architect and proceed to limit exposure therefrom by, at the option of the Owner, enclosing, containing or encapsulating said asbestos containing material in accord with all applicable industry standards of care and in compliance with all applicable municipal, county, state and Federal laws or regulations. Contractor shall not suspend Work in areas that are appropriately sealed off from the one where the asbestos has been discovered. Contractor shall provide Owner with an estimate of the costs for any additional work resulting from encountering asbestos and Contractor and Owner shall mutually agree on the appropriate compensation for Contractor.

10.2 Safety of Persons and Property

Add the following Clause 10.2.1.4 to subparagraph 10.2.1:

10.2.1.4 The work of the Owner or other separate contractors.

Add the following Subparagraph 10.2.8 to 10.2:

10.2.8 Any special precautions for fire protection necessary for the execution of a Contractor's Work shall be the responsibility of the Contractor requiring same and the cost of such precautions shall be paid for by that Contractor. The Contractor is in no way relieved of its responsibility to abide by the Occupational Safety Health Act (OSHA)

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regulations and for recording and registering accidents by the reporting of accidents to the Owner and the Architect.

ARTICLE 11. INSURANCE AND BONDS

11.1 Contractor's Liability Insurance

Add the following Clauses 11.1.1.8 and 11.1.1.9 to 11.1.1:

11.1.1.8 Liability insurance in such form and with such companies as are acceptable to the Bank, shall include all major divisions of coverage and be on a comprehensive basis including:

- .1 Premises Operations (including X, C, and U coverages as applicable).
- .2 Independent Contractors' Protective.
- .3 Products and Completed Operations.
- .4 Personal Injury Liability with Employment Exclusion deleted.
- .5 Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
- .6 Owned, non-owned, and hired motor vehicles.
- .7 Broad Form Property Damage including Completed Operations.

11.1.1.9 If the General Liability coverages are provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall pre-date the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

Add the following Clause 11.1.2.1 to 11.1.2:

11.1.2.1 The insurance required by Subparagraph 11.1.1 shall be written for the limits as set forth in the AIA Document A121/CMc and Document 565, 1991 Edition, as it may be amended by the Rider generated by the Bank for this Project.

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11.3 Property Insurance

Delete Paragraph 11.3 entirely and substitute the following:

11.3 Property Insurance

11.3.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include all risk insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If not covered under the all risk insurance, the Contractor shall effect and maintain similar property insurance for portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment under Subparagraph 9.3.2.

11.3.2 Any loss insured under Subparagraph 11.3.1 is to be adjusted with the Contractor and made payable to the Contractor as trustee for the insureds, as their interest may appear, subject to the requirements of Subparagraph 11.3.6. The Contractor shall pay the Owner and each Sub-contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payment to his Sub-subcontractors in similar manner.

11.3.3 The Contractor shall file a copy of all policies with the Owner before an exposure to loss may occur.

11.3.4 The Owner and Contractor waive all rights against each other and the Subcontractors, Sub-subcontractors, agents and employees each of the other, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 11.3 except such rights as they may have to the proceeds of such insurance held by the Contractor as trustee. The foregoing waiver afforded the Architect, his consultants and agents and employees shall not extend to the liability imposed by Subparagraph 3.18.3. The Contractor shall require of the separate Contractors, Subcontractors, and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Subparagraph 11.3.4.

11.3.5 If required in writing by any party in interest, the Contractor as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of his duties. He shall deposit in a separate account any money so received, and he shall distribute it in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate order for extra work.

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11.3.6 The Contractor as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five (5) days after the occurrence of loss the Contractors exercise of this power, and if such objection is made arbitrators shall be chosen. The Contractor as trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.3.7 The Owner shall continue to occupy or use a portion or portions of the Work prior to Substantial Completion thereof. The Contractor shall insure that the insurance company or companies providing the property insurance have consented to this occupancy and use by endorsement to the policy or policies. The insurance shall not be canceled or lapsed on account of such partial occupancy or use.

Add the following Paragraph 11.5 to Article 11:

11.5 Other Insurance

11.5.1 The Owner shall not be obligated to procure or maintain any form of fire (property), liability, or other insurance.

11.5.2 The Contractor shall furnish a Performance Bond and Labor/Material Bonds covering the faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source if authorized to transact business in the state of New York/New Jersey and the cost thereof shall be included in the Contract Sum.

11.5.2.1 The Contractor shall deliver the required Bonds to the Owner not later than three (3) days following the date the Contract is entered into.

11.5.2.2 The attorney-in-fact who executes the required Bonds on behalf of the Surety shall affix thereto a certified and current copy of the power of attorney.

ARTICLE 12. UNCOVERING AND CORRECTION OF WORK

12.2 Correction of Work

Add the following to the end of Subparagraph 12.2.2:

If, in the judgement of the Owner, any material, equipment or systems require corrective work because of defects in material or workmanship within the one (1) year warranty period or extended warranty periods, the Contractor shall complete all required corrective work within forty-five (45) days of notice. If the Contractor does not in accordance with the terms and provisions of the Contract, complete all corrective work within forty-five

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(45) days, or comply with and fulfill his warranty obligations, the Owner will notify the bonding company to have such work and/or obligations performed at no additional cost to the Owner. The obligations of the Contractor under the terms and provisions of the Contract, shall not, however, be limited to the surety retained by the Owner pursuant to the provisions of the Contract.

ARTICLE 13. MISCELLANEOUS PROVISIONS

13.1 Governing Law

Delete Paragraph 13.1.1 entirely and substitute:

This Contract and the rights and obligations under this Contract shall be governed by and construed in accordance with the Federal law of the United States of America and, in the absence of controlling Federal law, in accordance with the law of the State of New York, notwithstanding New York's choice of law rules, and in accordance with the law of the State of New Jersey, notwithstanding New Jersey's choice of law rules.

Delete Paragraph 13.3.1 entirely and substitute:

Any notice or other communication required or permitted to be given or delivered under this Contract shall be in writing and shall be sufficiently given if delivered personally, which shall be required with regard to notices applicable to a material breach, or sent by telegram or cable, or mailed by first-class or overnight delivery mail, return receipt requested, postage prepaid, as follows:

To Owner:

Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045

Attention: Mr. Richard Prisco, Assistant Vice President

To Contractor:

or to such other address or addresses as either party may from time to time designate to the other by written notice. Any notice shall be deemed to be given when received.

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ARTICLE 14. TERMINATION OR SUSPENSION OF THE CONTRACT

Add the following new Subparagraph 14.4:

Article 14.4. Owner's Unrestricted Right to Terminate

14.4 Notwithstanding anything in this Contract to the contrary, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate this Contract at any time at its sole discretion, with or without cause, without liability of any kind. In such event, the Owner shall only be obligated to, pay the Construction Manager any Cost of Construction Manager's Services for services rendered prior to that time. Further, the Owner may assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions of the Construction Manager's Services to another Construction Manager acceptable to the Owner.

Add the following new Articles:

ARTICLE 15. RECORDS OF THE CONTRACTOR

15.1 Maintenance of Records

15.1.1 The Contractor shall maintain written records and computerized records, in a fashion acceptable to the owner, of all communications with the Architect and the Owner and make the same available for inspection by the Owner at all times. The Contractor shall maintain and keep, for a period of at least 10 (ten) years after the date of Final Acceptance, all records and other data relating to the Work. The Owner or the Owner's representative shall have the right to inspect and audit all records and other data of the Contractor relating to the Work.

ARTICLE 16. DAVIS-BACON ACT

16.1 Davis-Bacon Act

16.1.1 The Contractor and all Subcontractors shall be required to pay all laborers and mechanics employed or working upon the site of the Work the full amount of wage and fringe benefits due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor applicable to the class of work performed at the site of the Work. Although the Reserve Banks have taken the position that they are not legally subject to the Davis-Bacon Act and the implementing regulations, (40 U.S.C. § 276a et seq. and 29 CFR Part 5) this action is taken in recognition of the policy of the Act. The Contractor and all Subcontractors may not rely on the position of the Bank as a defense for noncompliance with the wage requirements of the Davis-Bacon Act.

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ARTICLE 17. SMALL AND DISADVANTAGED BUSINESSES

17.1 Small and Disadvantaged Businesses

To the extent consistent with the U.S. Court Decision in Adarand Constructors v. Pena, Owner has a policy of assisting small businesses and disadvantaged small business in participating in the performance of Owner's contracts. Contractor hereby agrees to carry out this policy in the awarding of subcontracts connected with this Contract to the fullest extent consistent with the efficient performance of this Contract. Contractor further agrees to furnish to Owner information demonstrating Contractor's compliance with this clause, upon request by Owner.

As used in this Contract, the term "small business" means a business qualifying as a small business concern under Article 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term "disadvantaged small business" means small business--

- (1) At least 51 percent (51%) owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent (51%) of the stock of the business is owned by one or more socially disadvantaged individuals; and
- (2) whose management and daily business operations are controlled by one or more such individuals. Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and any other minorities, or any other individual found to be disadvantaged by the Small Administration pursuant to Article 8(a) of the Small Business Act.

Contractor, acting in good faith, may rely on written representations by its subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

ARTICLE 18. EQUAL OPPORTUNITY

18.1 Contractor Will Not Discriminate

In the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. The Contractor shall, in all solicitations or advertisement for employees placed by him or on his behalf, state that all qualified applicants will receive

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

consideration for employment without regard to race, religion, color, sex, age, disability or national origin.

ARTICLE 19. FORCE MAJEURE

19.1 Force Majeure

Neither party shall be liable for its failure or delay in performance of its obligations under this Contract due to strikes, wars, revolutions, fires, floods, explosions, earthquakes, statutes or government regulations, or other causes beyond its control.

ARTICLE 20. JURISDICTION

20.1 Jurisdiction

The exclusive jurisdiction for any legal action or proceeding arising under this Contract shall be the United States District Court for the Southern District of New York, and the parties expressly submit to the jurisdiction of that court.

ARTICLE 21. SEVERABILITY

21.1 Severability

If any provision of this Contract is held invalid, illegal, or unenforceable, the remainder of this Contract shall not be affected thereby. If any portion of this Contract is held by a court of competent jurisdiction to conflict with any Federal, State, or local law or regulation, such portion of this Contract is hereby declared to be of such force and effect as is permissible in such jurisdiction.

ARTICLE 22. CONFIDENTIALITY

22.1 No Disclosure of Owner Information

Contractor acknowledges that any information regarding the Owner, including but not limited to, its operation, business practices, or security procedures obtained by Contractor, its agents or employees while performing the Agreement are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner's prior written consent.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

ARTICLE 23. RIGHT OF ENTRY

23.1 Contractor's Conditional Right of Entry

Any person or persons designated by Contractor but subject to the reasonable approval of the Owner shall have the right to enter the premises of the Owner during the Owner's business hours and upon notice to the Owner or any other reasonable time agreed to by the Owner and subject to the Owner's reasonable security arrangements. A reasonable, security-related denial or restriction of access by Owner either for security reasons shall not constitute a breach of this Contract or affect Owner's rights or Contractor's obligations. Owner may conduct security investigations relating to Contractor personnel having access to Owner's facilities similar to investigations conducted with respect to Owner's own employees. Owner may require substitution of Contractor agents, employees and representatives for reasons relating to Owner security. It is understood that the person(s) designated by Contractor to have access to the Owner's premises will be Contractor's personnel, unless the Owner is notified and agrees to the contrary. The Contractor shall also indemnify the Bank for any penalties assessed against the Bank by the Immigration and Nationalization Service with regard to the knowing hiring of unauthorized workers, as well as any legal fees incurred by the Bank in defense of a related investigation by any branch of the United States Government.

ARTICLE 24. ADVERTISING

24.1 Contractor Shall Not Advertise Owner's Name

Contractor shall not use the Owner's name or any adaptation or variation of the Owner's name in any advertising, promotional material, or other publication, or otherwise publicize or communicate Contractor's relationship with the Owner, without the Owner's prior written consent.

ARTICLE 25. BACKGROUND INVESTIGATIONS

25.1 Background Investigations

Because of the sensitive and confidential information about the Bank's business affairs, operation and security procedures which the Construction Manager may be given or have access to during the term of this Agreement, the Bank will conduct background investigations of the Construction Manager at the Construction Manager's expense. In the Bank's sole discretion, the Bank may conduct more than one such background investigation during the term of this Agreement and such investigations may include, but not be limited to, researching the Construction Manager's ownership, business history and record of ethical conduct. If (i) the Construction Manager fails to promptly cooperate with any such background investigations; or (ii) the Bank determines, in its sole discretion, that the results of any background investigation are not satisfactory to the Bank, the Bank may, at its sole

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

option, terminate this Agreement immediately and without any liability on behalf of the Bank, other than to pay the Construction Manager of any services that have been properly rendered under this Agreement as of the date of termination. In the event the Bank terminates this Agreement in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Construction Manager of the specific results of the background check or why the Bank deemed those results unsatisfactory.

IN WITNESS WHEREOF, the parties have duly executed this Contract on the dates set forth below:

AGREED:

AGREED:

(CONSTRUCTION MANAGER)

**FEDERAL RESERVE BANK
OF NEW YORK**

[SIGNATURE]

[SIGNATURE]

[PRINT NAME]

[PRINT NAME]

[TITLE]

[TITLE]

[DATE]

[DATE]

EXHIBIT B

Key Members of Construction Manager's Staff

The Construction Manager shall commit the following staff members to the Project at the following minimum level of time commitment:

During Preconstruction Phase of Work:

Project Executive:	hrs/week
Project Manager:	hrs/week
General Superintendent:	hrs/week
Estimator:	hrs/week

During Construction Phase of Work:

Project Executive:	hrs/week
Project Manager:	Full Time on Site
General Superintendent:	Full Time on Site
Estimator:	hrs/week

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

EXHIBIT C

Drawings and Specifications (as provided by the Consulting Architect at the appropriate completion level and attached upon acceptance of the Guaranteed Maximum Price)

12 USCS § 531

EXHIBIT D

LEXSTAT 12 USC 531

UNITED STATES CODE SERVICE
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*** CURRENT THROUGH P.L. 109-20, APPROVED 7/01/05 ***

TITLE 12. BANKS AND BANKING
 CHAPTER 4. TAXATION
 FEDERAL RESERVE BANKS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION*12 USCS § 531 (2005)***§ 531. Exemption from taxation**

Federal reserve banks, including the capital stock and surplus therein, and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate.

HISTORY:

(Dec. 23, 1913, ch 6, § 7(c) [§ 7, P 3], 38 Stat. 258; Aug. 10, 1993, P.L. 103-66, Title III, § 3002(c)(2), 107 Stat. 338.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**Explanatory notes:**

This section comprises subsec. (c) of § 7 of Act Dec. 23, 1913, ch 6. Subsec. (a) and a subsec. (b) of such § 7 are classified to *12 USCS § 289*, while a second subsec. (b) is classified to *12 USCS § 290*.

Redesignation:

This section, enacted as the third undesignated paragraph of § 7 of Act Dec. 23, 1913, ch 6, was redesignated subsec. (c) of such section by § 3002(c)(2) of Act Aug. 10, 1993, P.L. 103-66.

NOTES:**Related Statutes & Rules:**

This section is referred to in *26 USCS § 136*.

Research Guide:**Am Jur:**

68 Am Jur 2d, Sales and Use Taxes § 44.

Interpretive Notes and Decisions:

1. Generally 2. Scope of exemption 3. --Taxation of real estate 4. Effect of exemption on other taxes 5. Enforcement of exemption

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

12 USCS § 531

1. Generally

Exemption from taxation provided in 12 USCS § 531 does not extend to national banks organized under the National Bank Act, 12 USCS § § 21 et seq. *First Nat'l Bank v Durr* (1917, DC Ohio) 246 F 163, affd (1918, CA6 Ohio) 257 F 729; *Unemployment Compensation Com. v Wachovia Bank & Trust Co.* (1939) 215 NC 491, 2 SE2d 592.

2. Scope of exemption

Exemption extends to revenue stamps on stock certificates. (1916) 30 Op Atty Gen 511.

3. —Taxation of real estate

Waiver of immunity from real estate taxes under 12 USCS § 531 does not extend to special assessments, therefore, federal reserve bank is exempt from such taxes. *Federal Reserve Bank v Metrocentre Improv. Dist. #1* (1981, CA8 Ark) 657 F2d 183, affd (1982) 455 US 995, 71 L Ed 2d 857, 102 S Ct 1625.

4. Effect of exemption on other taxes

Bank's stockholders are not entitled for purposes of tax assessment to any deduction from value of stockholdings on account of bank's holding of Federal Reserve Bank stock. *First Nat'l Bank v Beaman* (1918, CA6 Ohio) 257 F 729.

Fact that contractors would charge more for federal building if forced to pay local sales taxes would be insufficient to exempt their purchases from taxation by state, but taxes may be levied on purchases of government itself; Federal Reserve Bank will be treated as purchaser of materials provided in contract, and thus exempt from state sales tax under 12 USCS § 531, where amended contract for construction of building for bank provided, inter alia, that all purchases of supplies and material would be made by bank itself, with title passing to bank upon delivery of materials ordered, risk of loss beyond certain amount being with bank, and all advances being deducted from fixed-sum contract. *Federal Reserve Bank v Commissioner of Corps. & Taxation* (1975, CA1 Mass) 520 F2d 221.

Persons engaged in business of making sales at retail who are subject to Michigan sales tax are required to include in amount of their gross proceeds used for computation of tax proceeds of their business derived from sales to Federal Reserve Bank. *Federal Reserve Bank v Department of Revenue* (1954) 339 Mich 587, 64 NW2d 639.

5. Enforcement of exemption

Federal Reserve Bank may sue in federal court for declaration concerning legality of state sales tax on materials used to construct its new building, and need not be joined as coplaintiff with United States. *Federal Reserve Bank v Commissioner of Corps. & Taxation* (1974, CA1 Mass) 499 F2d 60.

EXHIBIT E
FEDERAL RESERVE BANK OF NEW YORK
MAIN BUILDING HOUSE RULES
12/15/04

The following are procedures that will be strictly enforced for all contractor personnel working at, or visiting the Federal Reserve Bank of New York ("Bank") located at 33 Liberty Street, New York, New York 10045 (the "Main Building"):

1. The Bank is a smoke free building. This includes the construction site.
2. Personnel using language or exhibiting behavior that can be construed as sexual harassment will be removed from the Main Building.
3. Access to the Main Building is only through the "trucking" entrance located on the Maiden Lane side of the Main Building. Passing through a metal detector is mandatory upon every entry to the Main Building.
4. Access to construction areas is only through the freight cars and/or designated stairway. Sub-contractors shall confine themselves to the floors and areas where they have work. Sub-contractor's personnel found in areas where they have no work will be removed from the Main Building.
5. All access to the Bank is at the discretion of the Bank's Protection Department and can be revoked at any time. All sub-contractors must submit a list of all staff they anticipate working on, or visiting the Project to the Construction Manager so that the names can be submitted to the Bank. All sub-contractor personnel must show a photo identification card (i.e., Bank issued photo identification card, valid state issued drivers license or an original passport) daily to be permitted access to the Main Building.
6. All overtime work on weekdays, weekends and Bank holidays are to be planned in advance and requires a separate access memorandum. The Construction Manager shall coordinate with the Bank regarding access to the Main Building, loading dock, elevator use, and security clearance to the work area, etc. Work shall not be allowed without advance notice and approval by the Bank.
7. All sub-contractors and their employees are required to submit to a FBI fingerprint background check. Following the fingerprint check, a photo identification card will be issued that must be displayed at all times while working in the Main Building and will be required for all future building access for the duration of the Project. The Bank's Protection Department will permit entry for designated workers (those whose names have been submitted on the list) who have not been fingerprinted for a limited time period only; five (5) days (consecutive or non-consecutive in a one (1) year period). Their entry will be monitored by the Bank and once they have entered the Main Building more than five (5) days (consecutive or non-consecutive in a one (1) year period), they must be fingerprinted or access will be denied.
8. The Construction Manager will coordinate the fingerprinting process with the Bank. The process usually takes less than twenty (20) minutes per individual. All workers are required to show a photo identification card (i.e., valid state issued drivers license or an original passport), in order for them to be fingerprinted.

Construction Manager: _____ Bank: _____

9. Selected personnel (i.e., foremen, superintendents, project managers, and company principals, etc.) can, at the Bank's discretion, be issued a "green" photo identification card. This will allow them additional access and "sign in" privileges; the limited ability to sign in other employees of their company. In order to be issued a "green" photo identification card, individuals will be required to submit to a drug screening (paid for by the Bank) in addition to the fingerprint background check.
10. The following information will be required one (1) day in advance of all deliveries: drivers name, license plate number, make and model of truck and the "name" on the truck. As long as the driver does not enter beyond the trucking area, they are not required to submit to the fingerprint check. To help in getting deliveries in an expeditious manner, the driver or the office should contact the field foreman via pager or cell phone when the delivery is at the Bank's checkpoint so that the delivery can be made. No truck will be permitted into the trucking area unless there is someone to receive the delivery. Attention must be paid to the overhead clearance of the loading dock area. Light fixtures and sprinklers reduce the overall height. Damage to the fixtures and piping shall be repaired at the expense of the sub-contractor who caused the damage. Vehicles shall remain in the loading dock only long enough to make delivery and must be parked elsewhere by the sub-contractor.
11. The Main Building has two (2) freight elevators that may be used to lift materials. The sub-contractor shall determine what can fit and how to break down equipment for transport in the cars. No equipment can be lifted via the top or bottom of the elevator cars. The Main Building has priority on the use of the freight cars. These elevators cannot be dedicated to construction deliveries for a lengthy period of time except on overtime. Sub-contractors shall coordinate deliveries with the Construction Manager who shall coordinate with the Bank. Notice of major deliveries must be given with a minimum of seven (7) days advance notice.
12. Deliveries that require the use of a crane or boom truck, etc. must be scheduled for overtime weekend hours only. Seven (7) days advance notice must be provided so that coordination of security, elevator use, etc. can be arranged. Street closings, permits, traffic control, etc. shall be the responsibility of the sub-contractor and a copy of all documentation shall be provided to the Bank in advance.
13. The sub-contractor shall not use any Bank owned equipment such as ladders, tools, etc. unless specifically authorized in writing in advance.
14. The entire Main Building will be occupied during the Project and Bank functions are scheduled by the Bank during the day and night. The need to prevent noise, dirt, odor and smoke from traveling through the Main Building during these "quiet times" must be expected and accommodated by the sub-contractor.
15. Burning or flame cutting is not allowed by the Bank. Welding is not allowed without advance notice to the Bank, a "hot works permit" issued by the Bank and submittal of current welding certificates for each welder. Active smoke detectors and fire suppression systems are in place throughout the Main Building. Extreme care, including fire watch, welding blankets, smoke eaters and fire extinguishers are mandated whenever welding or open flame is allowed by the Bank.

16. A minimum of seven (7) days advance notice after approval of an overall shutdown schedule must be given when requesting a shutdown of existing electrical, plumbing, sprinkler, standpipe, HVAC and standby systems, or any system the Bank deems critical. Such shutdowns are completely at the discretion of the Bank and must be coordinated with other shutdowns that may be scheduled by other sub-contractors in the Main Building.
17. It shall be assumed that all existing conduits, pipes, etc. are live and in use unless otherwise marked by the Bank's Main Building personnel. Should any such existing work interfere with the new installation, the sub-contractor, through the Construction Manager, shall request that the Main Building's personnel assist in identifying the existing work and, in conjunction with the project engineer, determine what can be done to turn off, re-route or remove the obstruction.
18. The Bank considers all manner of knives as weapons no matter how small. Workers requiring knives for their job must put them in a "genuine" tool bag along with other tools. Any knife not in a tool bag will be confiscated and not returned.
19. Anything being taken out of the Bank will be subjected to a check by the Bank's Protection Department, and must be accompanied by a building pass signed by a Bank employee representative. Please schedule requests for building passes in advance to ensure that removal of materials, tools and equipment are not delayed unnecessarily.
20. All sub-contractor personnel must use only the rest rooms that are designated for their use. The Bank will provide paper and soap but the sub-contractors are responsible for the general cleanliness of the restrooms during the Project. A walk-thru shall be scheduled at the beginning of the Project to document the condition of the bathrooms. Sub-contractors shall be responsible for all damage to the bathrooms.
21. Sub-contractor personnel will be permitted to use the 12th floor cafeteria as guests under the following conditions. If these conditions are not met, cafeteria privileges will be revoked:
- A. Access to the cafeteria will be through the freight car only.
 - B. Sub-contractor personnel using the cafeteria and/or dining room shall conduct themselves in an appropriate manner at all times, and refrain from loud or inappropriate language and behavior.
 - C. Sub-contractor personnel shall maintain a reasonable standard of cleanliness in the cafeteria.
 - D. The cafeteria is not to be used as a deli. Ordering for more than one person is not permitted. If an individual is ordering for more than themselves, they must go outside the Bank.
 - E. The Bank has sole discretion of removing these privileges for violation of rules of conduct or any other reason. The Bank may exclude one or all sub-contractors from the cafeteria.
22. Alcoholic beverages and drugs are not allowed anywhere on the property. Anyone observed possessing or consuming alcoholic beverages or drugs on the Bank's property shall be removed from the property.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

23. All Occupational Safety and Health Administration regulations must be followed including hard hats, hot works permits, lock out tag out procedures, personal safety equipment, ladders, scaffolds, etc.
24. An emergency phone list shall be submitted by the Construction Manager to the Bank that shall include the name and number of the Foreman, Superintendent and Company Officer for each sub-contractor. After work office numbers, answering machines, dispatchers, etc. are not acceptable in this regard. Twenty-four (24) hour office numbers, home, cell phone and beeper numbers shall be provided with the understanding that the individuals listed shall be available at all times at one of these numbers. These numbers will be treated as confidential and only for use in emergency.
25. In case of an accident requiring medical attention and/or an ambulance, the Bank's Central Watch Office (x5106) shall be immediately notified. The Bank has a physician on staff during normal working hours that can provide assistance while outside help is on the way. The Central Watch Office can also summon outside help if needed. All incidents must be documented and reports issued to the Bank.
26. In case of fire, the Bank's Central Watch Office (x5106) shall be immediately notified. The Bank's Central Watch Office will contact and obtain outside assistance as needed. Sub-contractor personnel shall observe all Main Building fire drills and fire department directions.
27. Shanties and material storage must be coordinated with the Construction Manager and the Bank. In general, such areas shall be limited to the Project area. Storage in the loading dock is specifically not allowed. Storage outside the work area may be allowed at the total discretion of the Bank. All storage shall take into account the Bank's allowable floor loading.

ATTACHMENT C: MAIN BUILDING HOUSE RULES

**FEDERAL RESERVE BANK OF NEW YORK
MAIN BUILDING HOUSE RULES
12/15/04**

The following are procedures that will be strictly enforced for all contractor personnel working at, or visiting the Federal Reserve Bank of New York ("Bank") located at 33 Liberty Street, New York, New York 10045 (the "Main Building"):

1. The Bank is a smoke free building. This includes the construction site.
2. Personnel using language or exhibiting behavior that can be construed as sexual harassment will be removed from the Main Building.
3. Access to the Main Building is only through the "trucking" entrance located on the Maiden Lane side of the Main Building. Passing through a metal detector is mandatory upon every entry to the Main Building.
4. Access to construction areas is only through the freight cars and/or designated stairway. Sub-contractors shall confine themselves to the floors and areas where they have work. Sub-contractor's personnel found in areas where they have no work will be removed from the Main Building.
5. All access to the Bank is at the discretion of the Bank's Protection Department and can be revoked at any time. All sub-contractors must submit a list of all staff they anticipate working on, or visiting the Project to the Construction Manager so that the names can be submitted to the Bank. All sub-contractor personnel must show a photo identification card (i.e., Bank issued photo identification card, valid state issued drivers license or an original passport) daily to be permitted access to the Main Building.
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7. All sub-contractors and their employees are required to submit to a FBI fingerprint background check. Following the fingerprint check, a photo identification card will be issued that must be displayed at all times while working in the Main Building and will be required for all future building access for the duration of the Project. The Bank's Protection Department will permit entry for designated workers (those whose names have been submitted on the list) who have not been fingerprinted for a limited time period only; five (5) days (consecutive or non-consecutive in a one (1) year period). Their entry will be monitored by the Bank and once they have entered the Main Building more than five (5) days (consecutive or non-consecutive in a one (1) year period), they must be fingerprinted or access will be denied.
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required to show a photo identification card (i.e., valid state issued drivers license or an original passport), in order for them to be fingerprinted.

9. Selected personnel (i.e., foremen, superintendents, project managers, and company principals, etc.) can, at the Bank's discretion, be issued a "green" photo identification card. This will allow them additional access and "sign in" privileges; the limited ability to sign in other employees of their company. In order to be issued a "green" photo identification card, individuals will be required to submit to a drug screening (paid for by the Bank) in addition to the fingerprint background check.
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11. The Main Building has two (2) freight elevators that may be used to lift materials. The sub-contractor shall determine what can fit and how to break down equipment for transport in the cars. No equipment can be lifted via the top or bottom of the elevator cars. The Main Building has priority on the use of the freight cars. These elevators cannot be dedicated to construction deliveries for a lengthy period of time except on overtime. Sub-contractors shall coordinate deliveries with the Construction Manager who shall coordinate with the Bank. Notice of major deliveries must be given with a minimum of seven (7) days advance notice.
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13. The sub-contractor shall not use any Bank owned equipment such as ladders, tools, etc. unless specifically authorized in writing in advance.
14. The entire Main Building will be occupied during the Project and Bank functions are scheduled by the Bank during the day and night. The need to prevent noise, dirt, odor and smoke from traveling through the Main Building during these "quiet times" must be expected and accommodated by the sub-contractor.
15. Burning or flame cutting is not allowed by the Bank. Welding is not allowed without advance notice to the Bank, a "hot works permit" issued by the Bank and submittal of current welding certificates for each welder. Active smoke detectors and fire suppression systems are in place throughout the Main Building. Extreme care, including fire watch, welding blankets, smoke eaters and fire extinguishers are mandated whenever welding or open flame is allowed by the Bank.

16. A minimum of seven (7) days advance notice after approval of an overall shutdown schedule must be given when requesting a shutdown of existing electrical, plumbing, sprinkler, standpipe, HVAC and standby systems, or any system the Bank deems critical. Such shutdowns are completely at the discretion of the Bank and must be coordinated with other shutdowns that may be scheduled by other sub-contractors in the Main Building.
17. It shall be assumed that all existing conduits, pipes, etc. are live and in use unless otherwise marked by the Bank's Main Building personnel. Should any such existing work interfere with the new installation, the sub-contractor, through the Construction Manager, shall request that the Main Building's personnel assist in identifying the existing work and, in conjunction with the project engineer, determine what can be done to turn off, re-route or remove the obstruction.
18. The Bank considers all manner of knives as weapons no matter how small. Workers requiring knives for their job must put them in a "genuine" tool bag along with other tools. Any knife not in a tool bag will be confiscated and not returned.
19. Anything being taken out of the Bank will be subjected to a check by the Bank's Protection Department, and must be accompanied by a building pass signed by a Bank employee representative. Please schedule requests for building passes in advance to ensure that removal of materials, tools and equipment are not delayed unnecessarily.
20. All sub-contractor personnel must use only the rest rooms that are designated for their use. The Bank will provide paper and soap but the sub-contractors are responsible for the general cleanliness of the restrooms during the Project. A walk-thru shall be scheduled at the beginning of the Project to document the condition of the bathrooms. Sub-contractors shall be responsible for all damage to the bathrooms.
21. Sub-contractor personnel will be permitted to use the 12th floor cafeteria as guests under the following conditions. If these conditions are not met, cafeteria privileges will be revoked:
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 - C. Sub-contractor personnel shall maintain a reasonable standard of cleanliness in the cafeteria.
 - D. The cafeteria is not to be used as a deli. Ordering for more than one person is not permitted. If an individual is ordering for more than themselves, they must go outside the Bank.
 - E. The Bank has sole discretion of removing these privileges for violation of rules of conduct or any other reason. The Bank may exclude one or all sub-contractors from the cafeteria.

22. **Alcoholic beverages and drugs are not allowed anywhere on the property. Anyone observed possessing or consuming alcoholic beverages or drugs on the Bank's property shall be removed from the property.**
23. **All Occupational Safety and Health Administration regulations must be followed including hard hats, hot works permits, lock out tag out procedures, personal safety equipment, ladders, scaffolds, etc.**
24. **An emergency phone list shall be submitted by the Construction Manager to the Bank that shall include the name and number of the Foreman, Superintendent and Company Officer for each sub-contractor. After work office numbers, answering machines, dispatchers, etc. are not acceptable in this regard. Twenty-four (24) hour office numbers, home, cell phone and beeper numbers shall be provided with the understanding that the individuals listed shall be available at all times at one of these numbers. These numbers will be treated as confidential and only for use in emergency.**
25. **In case of an accident requiring medical attention and/or an ambulance, the Bank's Central Watch Office (x5106) shall be immediately notified. The Bank has a physician on staff during normal working hours that can provide assistance while outside help is on the way. The Central Watch Office can also summon outside help if needed. All incidents must be documented and reports issued to the Bank.**
26. **In case of fire, the Bank's Central Watch Office (x5106) shall be immediately notified. The Bank's Central Watch Office will contact and obtain outside assistance as needed. Sub-contractor personnel shall observe all Main Building fire drills and fire department directions.**
27. **Shanties and material storage must be coordinated with the Construction Manager and the Bank. In general, such areas shall be limited to the Project area. Storage in the loading dock is specifically not allowed. Storage outside the work area may be allowed at the total discretion of the Bank. All storage shall take into account the Bank's allowable floor loading.**

ATTACHMENT D: VENDOR INTEGRITY PROGRAM

FEDERAL RESERVE BANK OF NEW YORK REAL ESTATE AND GENERAL SERVICES DEPARTMENT

The Federal Reserve Bank of New York (the "Bank") is committed to the highest standards in its security and business practices. As part of the Bank's ongoing effort to maintain these standards, the Bank has instituted a vendor screening program ("Vendor Integrity Program" or "VIP") which shall be administered by the Bank's Protection Department. Business areas area required to comply with the VIP. The scope of VIP includes all of the Bank's vendors.

The purpose of the Bank's new vendor screening program is twofold:

- To enhance the Bank's security systems by ensuring that only screened vendors and individuals have access to its facilities; and
- To ensure that the Bank limits its business relationships to entities which maintain high ethical standards in their business practices.

Program

There are three (3) components to the VIP:

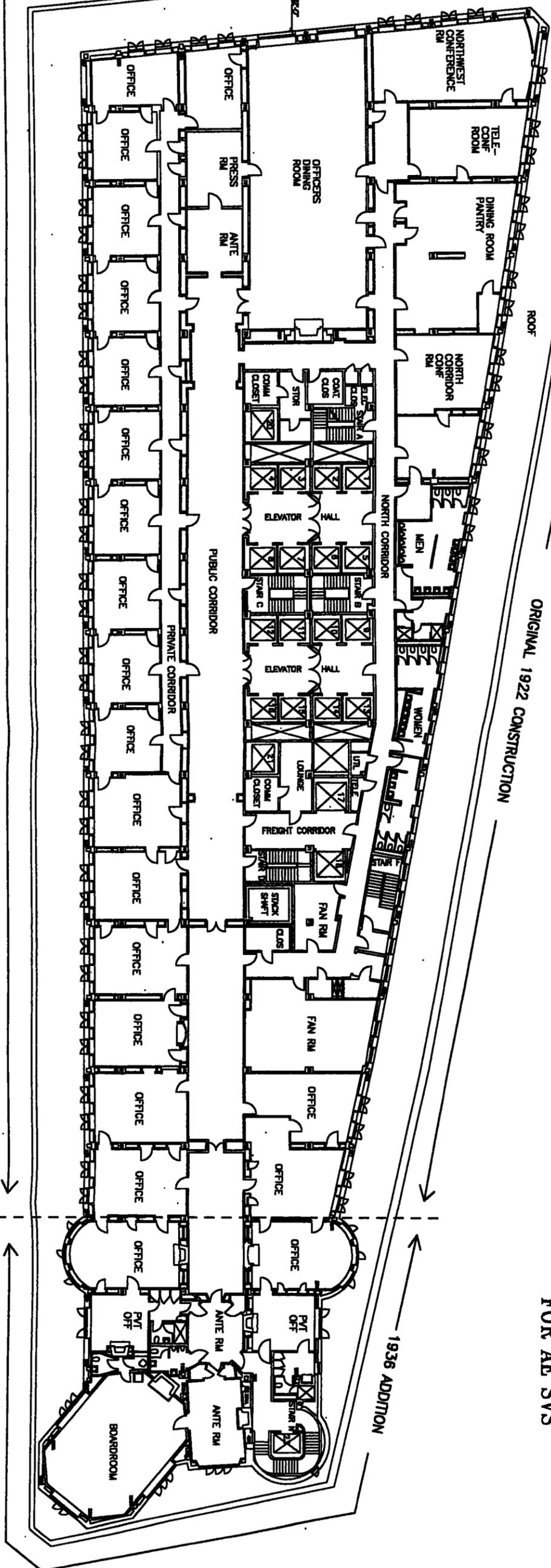
1. The first component requires vendors to become familiar with the Bank's business practices and agree to abide by them with respect to their contract with the Bank;
2. The second component requires that vendors supply the Bank with the information necessary to conduct a background review; and
3. The third component asks questions regarding the vendor's employees, and requires that vendors have an adequate program in place to screen all of the employees and representatives that it will send to the Bank's facilities.

Procedures

1. The business area submits its vendor information to the Bank's Protection Department.
2. The Protection Department evaluates each vendor and submits those to which the VIP applies to Kroll Associates Inc. ("Kroll"), the investigative firm that has been contracted to perform the background checks.
3. Kroll forwards a questionnaire to the vendor.

4. **Once the vendor returns its "packet of information" and fee of \$600 to Kroll, Kroll begins the background check.**
5. **Kroll presents its findings to the Bank's Protection Department.**
6. **The Protection Department evaluates these findings, and vendors that meet the Bank's standards will be included in the Approved Vendor List.**
7. **If negative information is developed during the screening process, the Protection Department will contact the relevant business area(s) and discuss what course of action is appropriate under the circumstances.**

ATTACHMENT E: FLOOR PLANS



ATTACHMENT C-1
TO THE RFP
FOR AE SVS

EXISTING CONDITIONS

Projects & Client Services
March 2006
SCALE 1/16" = 1'-0"

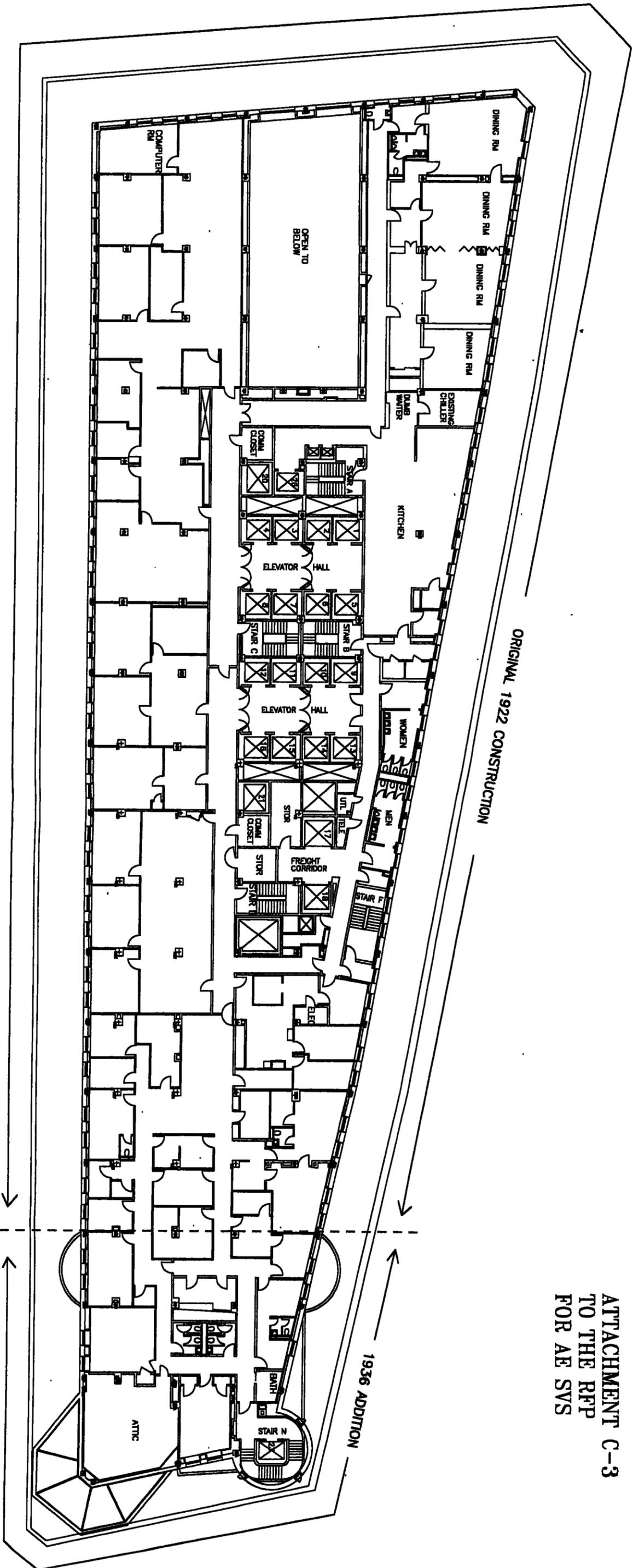
THE FEDERAL RESERVE BANK OF NEW YORK

33 LIBERTY STREET
PLAN OF 10TH FLOOR

10



ATTACHMENT C-3
TO THE RFP
FOR AE SVS



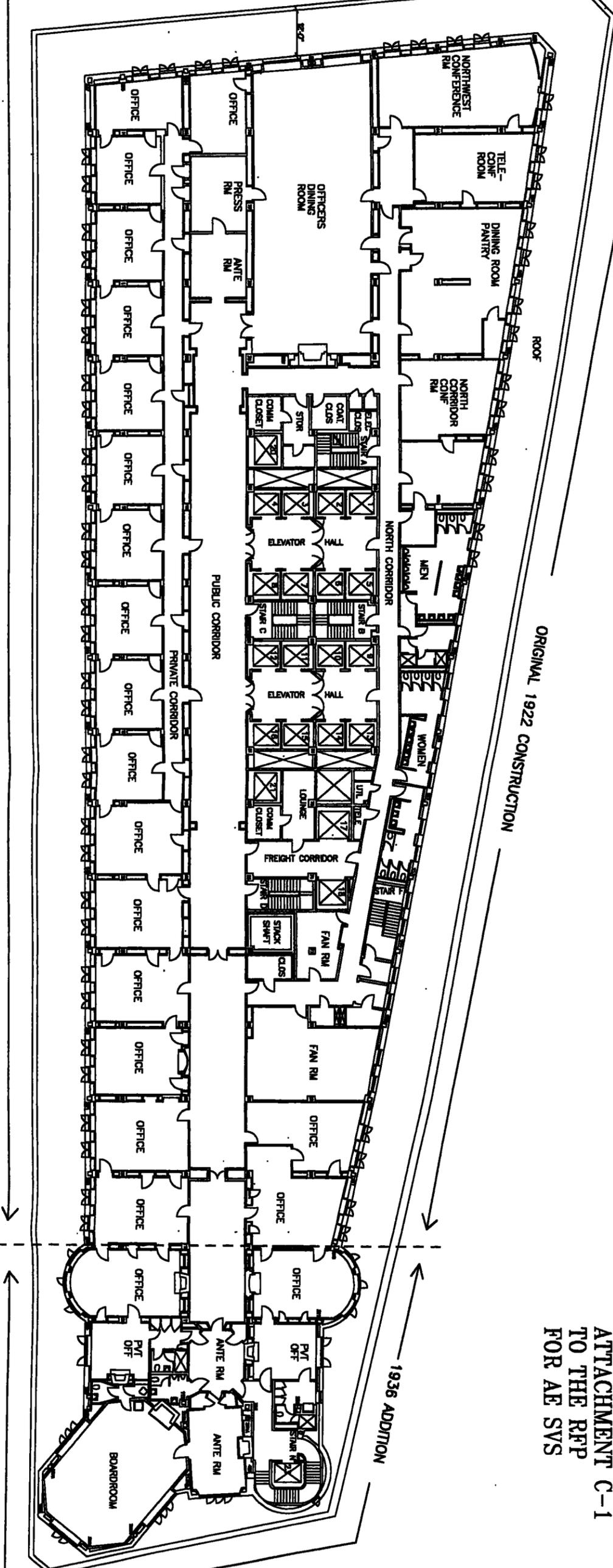
EXISTING CONDITIONS

Projects & Client Services
March 2006
SCALE 1/16" = 1'-0"

THE FEDERAL RESERVE BANK OF NEW YORK

33 LIBERTY STREET
PLAN OF 11TH FLOOR

11



ATTACHMENT C-1
TO THE RFP
FOR AE SVS

EXISTING CONDITIONS

Projects & Client Services
March 2006
SCALE 1/16" = 1'-0"

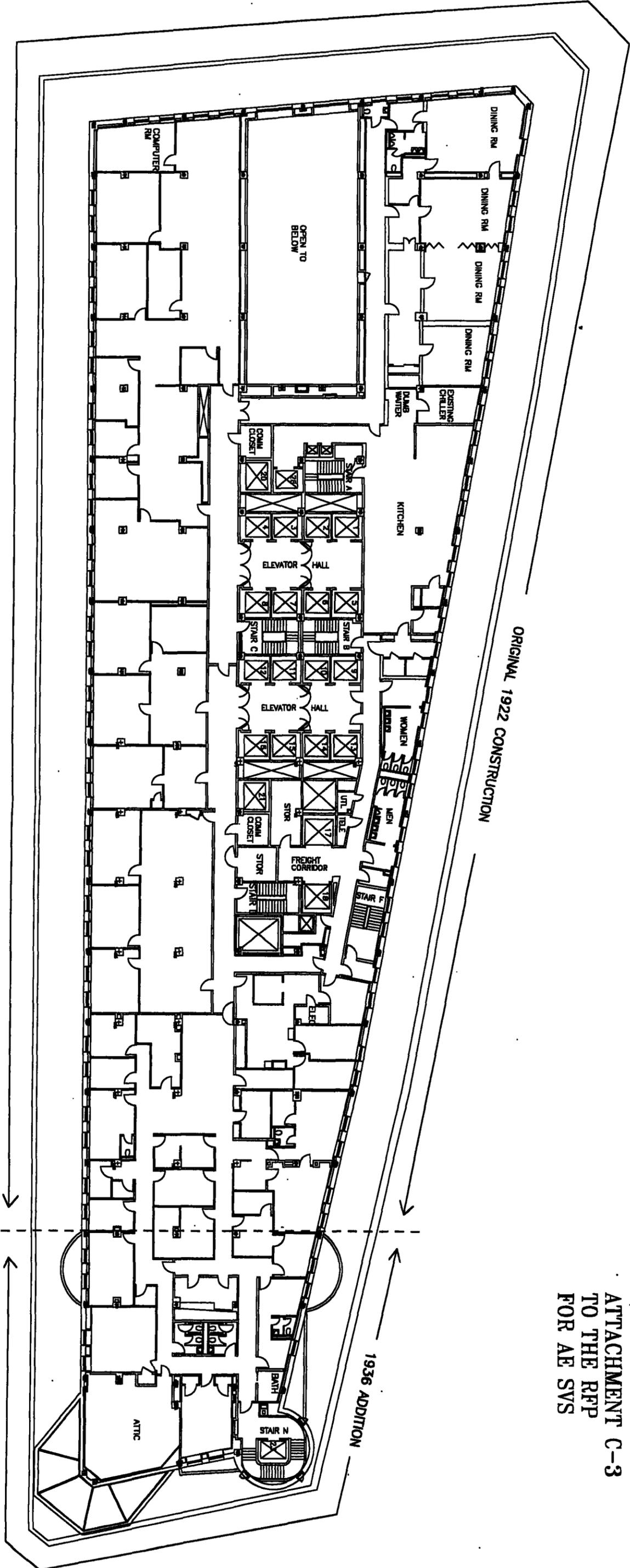
THE FEDERAL RESERVE BANK OF NEW YORK

33 LIBERTY STREET
PLAN OF 10TH FLOOR

10



ATTACHMENT C-3
TO THE RFP
FOR AE SVS



EXISTING CONDITIONS

Projects & Client Services
March 2006
SCALE 1/16" = 1'-0"

THE FEDERAL RESERVE BANK OF NEW YORK

33 LIBERTY STREET
PLAN OF 11TH FLOOR

fedex.com 1.800.GoFedEx 1.800.463.3339

1 From *Please print and print here*
 Date **6-7-06** Sender's FedEx Account Number **2416-8519-5**
 Sender's Name **Joseph Dognacki** Phone **(212) 790-5812**
 Company **FEDERAL RESERVE BANK/REGS**
 Address **33 LIBERTY ST - Main Bldg, 2M**
 City **NEW YORK** State **NY** ZIP **10045**

2 Your Internal Billing Reference
 First 24 characters will appear on invoice.

3 To Recipient's Name **John Thomas** Phone **(212) 279-6000**
 Company **Turner Construction Company**
 Recipient's Address **375 Hudson Street**
 City **New York** State **ny** ZIP **10014**
 0334415309

4a Express Package Service
 FedEx Priority Overnight
 FedEx Standard Overnight
 FedEx First Overnight
 FedEx 2Day
 FedEx Express Saver
 FedEx 1Day Freight*

4b Express Freight Service
 FedEx 1Day Freight*
 FedEx 2Day Freight
 FedEx 3Day Freight

5 Packaging
 FedEx Envelope*
 FedEx Pak*
 FedEx Box
 FedEx Tube
 Other

6 Special Handling
 SATURDAY Delivery
 HOLD Wednesday at FedEx Location
 HOLD Saturday at FedEx Location
 No
 Yes
 Yes
 Dry Ice
 Cargo Aircraft Only

7 Payment *Bill to:* Enter FedEx Acct. No. or Credit Card No. below.
 Sender
 Recipient
 Third Party
 Credit Card
 Cash/Check

Total Packages	Total Weight	Total Declared Value*
		\$.00

Schedule a pickup at fedex.com
 Simplify your shipping. Manage your account. Access all the tools you need.

fedex.com 1.800.GoFedEx 1.800.463.3339

1 From *Please print and print here*
 Date **6-1-06** Sender's FedEx Account Number **2416-8519-5**
 Sender's Name **Joseph Dognacki** Phone **(212) 790-5812**
 Company **FEDERAL RESERVE BANK/REGS**
 Address **33 LIBERTY ST - Main Bldg, 2M**
 City **NEW YORK** State **NY** ZIP **10045**

2 Your Internal Billing Reference
 First 24 characters will appear on invoice.

3 To Recipient's Name **Timothy Heaney** Phone **(212) 849-4800**
 Company **Plaza Construction Corporation**
 Recipient's Address **260 Madison Avenue - 9F**
 City **New York** State **ny** ZIP **10016**
 0334415309

4a Express Package Service
 FedEx Priority Overnight
 FedEx Standard Overnight
 FedEx First Overnight
 FedEx 2Day
 FedEx Express Saver
 FedEx 1Day Freight*

4b Express Freight Service
 FedEx 1Day Freight*
 FedEx 2Day Freight
 FedEx 3Day Freight

5 Packaging
 FedEx Envelope*
 FedEx Pak*
 FedEx Box
 FedEx Tube
 Other

6 Special Handling
 SATURDAY Delivery
 HOLD Wednesday at FedEx Location
 HOLD Saturday at FedEx Location
 No
 Yes
 Yes
 Dry Ice
 Cargo Aircraft Only

7 Payment *Bill to:* Enter FedEx Acct. No. or Credit Card No. below.
 Sender
 Recipient
 Third Party
 Credit Card
 Cash/Check

Total Packages	Total Weight	Total Declared Value*
		\$.00

Store your addresses at fedex.com
 Simplify your shipping. Manage your account. Access all the tools you need.

FedEx Express US Airbill

8544 5706 3084

0215

NO POUCH NEEDED. See back for pool and select application instructions.

1 From *when picked up* Date **6-1-06** Sender's FedEx Account Number **24-6-8519-5**

Sender's Name **Joseph Dognacki** Phone **(212) 720-5812**

Company **FEDERAL RESERVE BANK/REGS**

Address **33 LIBERTY ST - Main Bldg, 2m**

City **NEW YORK** State **NY** ZIP **10045**

2 Your Internal Billing Reference **7-411**

3 To Recipient's Name **Ronald Pennella** Phone **212 481-6100**

Company **Structure Tone, Inc.**

Recipient's Address **770 Broadway - 9F**

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address **New York** State **NY** ZIP **10003 9572**

0321320476



By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. Questions? Go to our Web site at fedex.com or call 1.800.GoFedEx 1.800.463.3338.

4a Express Package Service To add SATURDAY Delivery, see Section 6. Packages up to 500 lbs. *Weight limit.*

FedEx Priority Overnight FedEx Standard Overnight FedEx First Overnight *Business next business day. Delivery to select locations.**

FedEx 2Day *Second business day.** FedEx Express Saver *Third business day.**

4b Express Freight Service To add SATURDAY Delivery, see Section 6. Packages over 500 lbs. *Weight limit.*

FedEx 1Day Freight* FedEx 2Day Freight FedEx 3Day Freight *Third business day.**

5 Packaging Declared value limit \$500.

FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube Other

6 Special Handling Includes FedEx address in Section 3.

SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 3Day Freight to select ZIP codes. Does this shipment contain dangerous goods? No Yes (see attached Shipper's Declaration) Yes (see Shipper's Declaration and required Dry Ice, ICA, UN 1845) Cargo Aircraft Only

HOLD Weekday at FedEx Location HOLD Saturday at FedEx Location HOLD Sunday at FedEx Location *Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.*

7 Payment *BY A/c:* Enter FedEx Acct. No. or Credit Card No. below.

Shipper's bill in full Recipient Third Party Credit Card Cash/Check

FedEx Acct. No. or Credit Card No.	Rate
Total Packages	Total Weight
Total Declared Value*	
\$.00	

*Our liability is limited to \$500 unless you declare a higher value. See back for details. FedEx Use Only

8 NEW Residential Delivery Signature Options If you require a signature, check Direct or Indirect.

No Signature Required Direct Signature Indirect Signature

519

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

April 17, 2006

Beyer Blinder Belle, LLP
41 East 11th Street
New York, NY 10003

Attention: Mr. John Beyer

Re: Request for Proposals
Architectural Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Gentlemen:

Enclosed please find two copies of the Request for Proposals
in connection with the above-referenced project.

Please note that the proposals are due no later than 1 p.m.,
May³¹, 2006.

Sincerely,



Richard Prisco
Assistant Vice President

enclosures

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

April 17, 2006

Robert AM Stern Architects, LLP
460 West 34th Street
New York, NY 10001

Attention: Mr. Graham Wyatt

Re: Request for Proposals
Architectural Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Gentlemen:

Enclosed please find two copies of the Request for Proposals
in connection with the above-referenced project.

Please note that the proposals are due no later than 1 p.m.,
May 3rd, 2006.

Sincerely,



Richard Prisco
Assistant Vice President

enclosures

FedEx. US Airbill
Express

FedEx
Tracking
Number

8544 5706 2537

Sender's Copy

NO POUCH NEEDED.
See back for peel and stick application instructions.

1 From *Print and press hard*
Date 4-18-06 Sender's FedEx Account Number 2416-8519-5

Sender's Name Joseph Ozpcki Phone (212) 720-5812

Company FEDERAL RESERVE BANK/REGS

Address 33 LIBERTY ST - Main Bldg, 2M

City NEW YORK State NY ZIP 10045

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name John Beyer Phone 212 777-7800

Company Beyer, Blumberg & Buller

Recipient's Address 41 East 11th Street

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address NEW YORK State NY ZIP 10003

To request a package be held at a specific FedEx location, print FedEx address here.

City NEW YORK State NY ZIP 10003

0321320476

Try online shipping at fedex.com

By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.
Questions? Go to our Web site at fedex.com or call 1.800.GoFedEx 1.800.463.3339.

4a Express Package Service To add SATURDAY Delivery, see Section 8. Packages up to 150 lbs. To meet location.

FedEx Priority Overnight Next business morning. FedEx Standard Overnight Next business afternoon. FedEx First Overnight Earliest next business morning delivery to select locations.

FedEx 2Day Second business day. FedEx Envelope rate not available. Minimum charge: One-pound rate.

4b Express Freight Service To add SATURDAY Delivery, see Section 8. Packages over 150 lbs. To meet location.

FedEx 1Day Freight Next business day. FedEx 2Day Freight Second business day. FedEx 3Day Freight Third business day.

5 Packaging Declared value limit \$500.

FedEx Envelope* FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Shred Pak. FedEx Box FedEx Tube Other.

6 Special Handling Include FedEx address in Section 3.

SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes. HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight. HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods? One box must be checked.

No Yes Yes Dry Ice Dry Ice, UN 1845 Cargo Aircraft Only

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

7 Payment *BILL TO:* Enter FedEx Acct. No. or Credit Card No. below.

Sender Acct. No. in Section 1 will be billed. Recipient. Third Party. Credit Card Cash/Check

FedEx Acct. No. Exp. Date

Total Packages Total Weight Total Declared Value* \$.00

*Our liability is limited to \$500 unless you declare a higher value. See back for details. FedEx Use Only

8 NEW Residential Delivery Signature Options *if you require a signature, check Direct or Indirect.*

No Signature Required Packages may be left without obtaining a signature for delivery. Direct Signature Anyone at recipient's address may sign for delivery. Fee applies. Indirect Signature If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. Fee applies.

519

Rev. Date 03/04 Part (32277-01204-200) FedEx PRINTED IN U.S.A. 010

NO POUCH NEEDED.
See back for peel and stick application instructions.

FedEx. US Airbill
Express

FedEx
Tracking
Number

8544 5706 2548

Sender's Copy

1 From *Print and press hard*
Date 4-18-06 Sender's FedEx Account Number 2416-8519-5

Sender's Name Joseph Ozpcki Phone (212) 720-5812

Company FEDERAL RESERVE BANK/REGS

Address 33 LIBERTY ST - Main Bldg, 2M

City NEW YORK State NY ZIP 10045

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name Graham Wyatt Phone 917 351-8504

Company Robert AM Stern Architects, LLP

Recipient's Address 460 West 34th Street

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address NEW YORK State NY ZIP 10001

To request a package be held at a specific FedEx location, print FedEx address here.

City NEW YORK State NY ZIP 10001

0321320476

Try online shipping at fedex.com

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Questions? Go to our Web site at fedex.com or call 1.800.GoFedEx 1.800.463.3339.

4a Express Package Service To add SATURDAY Delivery, see Section 8. Packages up to 150 lbs. To meet location.

FedEx Priority Overnight Next business morning. FedEx Standard Overnight Next business afternoon. FedEx First Overnight Earliest next business morning delivery to select locations.

FedEx 2Day Second business day. FedEx Envelope rate not available. Minimum charge: One-pound rate.

4b Express Freight Service To add SATURDAY Delivery, see Section 8. Packages over 150 lbs. To meet location.

FedEx 1Day Freight Next business day. FedEx 2Day Freight Second business day. FedEx 3Day Freight Third business day.

5 Packaging Declared value limit \$500.

FedEx Envelope* FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Shred Pak. FedEx Box FedEx Tube Other.

6 Special Handling Include FedEx address in Section 3.

SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes. HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight. HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods? One box must be checked.

No Yes Yes Dry Ice Dry Ice, UN 1845 Cargo Aircraft Only

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

7 Payment *BILL TO:* Enter FedEx Acct. No. or Credit Card No. below.

Sender Acct. No. in Section 1 will be billed. Recipient. Third Party. Credit Card Cash/Check

FedEx Acct. No. Exp. Date

Total Packages Total Weight Total Declared Value* \$.00

*Our liability is limited to \$500 unless you declare a higher value. See back for details. FedEx Use Only

8 NEW Residential Delivery Signature Options *if you require a signature, check Direct or Indirect.*

No Signature Required Packages may be left without obtaining a signature for delivery. Direct Signature Anyone at recipient's address may sign for delivery. Fee applies. Indirect Signature If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. Fee applies.

519

Rev. Date 03/04 Part (32277-01204-200) FedEx PRINTED IN U.S.A. 010

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

April 17, 2006

Swanke Hayden Connell Architects
295 Lafayette Street
New York, NY 10012

Attention: Mr. Robert Cole

Re: Request for Proposals
Architectural Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Gentlemen:

Enclosed please find two copies of the Request for Proposals
in connection with the above-referenced project.

Please note that the proposals are due no later than 1 p.m.,
May 3rd, 2006.

Sincerely,



Richard Prisco
Assistant Vice President

enclosures

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

April 17, 2006

Gensler and Associates
48 Wall Street, Suite 900
New York, NY 10005

Attention: Mr. Kenneth Lunstead

Re: Request for Proposals
Architectural Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Gentlemen:

Enclosed please find two copies of the Request for Proposals in connection with the above-referenced project.

Please note that the proposals are due no later than 1 p.m., May 3rd, 2006.

Sincerely,



Richard Prisco
Assistant Vice President

enclosure

NO POUCH NEEDED. See back for peel and stick application instructions.



1 From Date 4-18-06 Sender's FedEx Account Number 2416-8519-5 Recipient's Name Joseph Ozacki Phone (212) 720-5812 Company FEDERAL RESERVE BANK/REGS Address 33 LIBERTY ST - Main Bldg, 20m City NEW YORK State NY ZIP 10045

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name Robert Cole Phone 212 219-6647 Company Swank, Hayden Cornell Architects Address 295 Lafayette Street City New York State NY ZIP 10012

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By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. Questions? Go to our Web site at fedex.com or call 1.800.GoFedEx 1.800.463.3339.

4a Express Package Service To add SATURDAY Delivery, see Section 6. Packages up to 150 lbs. FedEx Priority Overnight Next business morning. FedEx Standard Overnight Next business afternoon. FedEx First Overnight Next business morning delivery to select locations.

4b Express Freight Service To add SATURDAY Delivery, see Section 6. Packages over 150 lbs. FedEx 1 Day Freight Next business day. FedEx 2 Day Freight Second business day. FedEx 3 Day Freight Third business day.

5 Packaging FedEx Envelope, FedEx Pak, FedEx Box, FedEx Tube, Other

6 Special Handling SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 3Day Freight to select ZIP codes. HOLD Weekday at FedEx Location, HOLD Saturday at FedEx Location.

7 Payment \$0.00 Sender Recipient Third Party Credit Card Cash/Check Total Packages Total Weight Total Declared Value \$.00

8 NEW Residential Delivery Signature Options No Signature Required, Direct Signature, Indirect Signature

NO POUCH NEEDED. See back for peel and stick application instructions.



1 From Date 4-18-06 Sender's FedEx Account Number 2416-8519-5 Recipient's Name Joseph Ozacki Phone (212) 720-5812 Company FEDERAL RESERVE BANK/REGS Address 33 LIBERTY ST - Main Bldg, 20m City NEW YORK State NY ZIP 10045

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name Kenneth Dunstoad Phone 212 484-2440 Company Gender and Associates Address 488 Wall Street Suite 900 City New York State NY ZIP 10005

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4a Express Package Service To add SATURDAY Delivery, see Section 6. Packages up to 150 lbs. FedEx Priority Overnight Next business morning. FedEx Standard Overnight Next business afternoon. FedEx First Overnight Next business morning delivery to select locations.

4b Express Freight Service To add SATURDAY Delivery, see Section 6. Packages over 150 lbs. FedEx 1 Day Freight Next business day. FedEx 2 Day Freight Second business day. FedEx 3 Day Freight Third business day.

5 Packaging FedEx Envelope, FedEx Pak, FedEx Box, FedEx Tube, Other

6 Special Handling SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 3Day Freight to select ZIP codes. HOLD Weekday at FedEx Location, HOLD Saturday at FedEx Location.

7 Payment \$0.00 Sender Recipient Third Party Credit Card Cash/Check Total Packages Total Weight Total Declared Value \$.00

8 NEW Residential Delivery Signature Options No Signature Required, Direct Signature, Indirect Signature

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

April 17, 2006

Hillier Architecture
The Widener Building, Suite 1500
One South Penn Square
Philadelphia, PA 19107-3502

Attention: Mr. George Skarmeas

Re: Request for Proposals
Architectural Services
Restoration/Renovation of the Main Building's 10th and 11th
Floors

Gentlemen:

Enclosed please find two copies of the Request for Proposals
in connection with the above-referenced project.

Please note that the proposals are due no later than 1 p.m.,
May 3rd, 2006.

Sincerely,



Richard Prisco
Assistant Vice President

enclosures

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

April 17, 2006

Peter Marino and Associates
Architects
150 East 58th Street
New York, NY 10022

Attention: Mr. Peter Marino

Re: Request for Proposals
Architectural Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Gentlemen:

Enclosed please find two copies of the Request for Proposals
in connection with the above-referenced project.

Please note that the proposals are due no later than 1 p.m.,
May³~~2~~, 2006.

Sincerely,



Richard Prisco
Assistant Vice President

enclosures

FedEx. US Airbill
Express

FedEx Tracking Number

8544 5706 2570

Sender's Copy

NO POUCH NEEDED.
See back for peel and stick application instructions.

1 From *Print name and phone*
Date **4-18-06** Sender's FedEx Account Number **2416-8519-5**

Sender's Name **Joseph Czapacki** Phone **(212) 720-5812**

Company **FEDERAL RESERVE BANK/REGS**

Address **33 LIBERTY ST - Main Bldg - 2m**

City **NEW YORK** State **NY** ZIP **10045**

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name **George Skarmas** Phone **215,636-9999**

Company **Hillisch Architecture**

Recipient's Address **The Widener Building - Suite 1500**

We cannot deliver to P.O. boxes or P.O. ZIP codes

Address **One South Penn Square**

To request a package be held at a specific FedEx location, print FedEx address here.

City **Philadelphia** State **PA** ZIP **19107-3502**

0321320476

Try online shipping at fedex.com

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4a Express Package Service To add SATURDAY Delivery, see Section 6. Packages up to 150 lbs. * To meet location.

FedEx Priority Overnight Next business morning. FedEx Standard Overnight Next business afternoon. FedEx First Overnight Earliest next business morning delivery to select locations.

FedEx 2Day Second business day. FedEx Express Saver Third business day. FedEx Envelope rate not available. Minimum charge. One-pound rate.

4b Express Freight Service To add SATURDAY Delivery, see Section 6. Packages over 150 lbs. * To meet location.

FedEx 1Day Freight* Next business day. FedEx 2Day Freight Second business day. FedEx 3Day Freight Third business day.

* Call for Confirmation.

5 Packaging Declared value limit \$500.

FedEx Envelope* FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak. FedEx Box FedEx Tube Other

6 Special Handling Include FedEx address in Section 2.

SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes. Does this shipment contain dangerous goods? No Yes (see attached Shipper's Declaration and Package ID.) Yes Shipper's Declaration not required. Dry Ice Dry Ice, 6 UN 1845 Cargo Aircraft Only

HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight. HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

7 Payment \$/lb. Enter FedEx Acct. No. or Credit Card No. below.

Sender Acct. No. in Section 1 will be billed. Recipient Third Party Credit Card Cash/Check

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages Total Weight Total Declared Value*

\$.00

*Our liability is limited to \$100 unless you declare a higher value. See back for details. FedEx Use Only

8 NEW Residential Delivery Signature Options If you require a signature, check Direct or Indirect.

No Signature Required Packages may be left without obtaining a signature for delivery. Direct Signature Anyone at recipient's address may sign for delivery. Fee applies. Indirect Signature If you are available at recipient's address, someone at a neighboring address may sign for delivery. Fee applies.

519

FedEx. US Airbill
Express

FedEx Tracking Number

8544 5706 2581

Sender's Copy

NO POUCH NEEDED.
See back for peel and stick application instructions.

1 From *Print name and phone*
Date **4-18-06** Sender's FedEx Account Number **2416-8519-5**

Sender's Name **Joseph Czapacki** Phone **(212) 720-5812**

Company **FEDERAL RESERVE BANK/REGS**

Address **33 LIBERTY ST - Main Bldg, 2m**

City **NEW YORK** State **NY** ZIP **10045**

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name **Peter Marino** Phone **212 752-5444**

Company **Peter Marino & Associates Architects**

Recipient's Address **150 East 58th Street**

We cannot deliver to P.O. boxes or P.O. ZIP codes

Address **[Redacted]**

To request a package be held at a specific FedEx location, print FedEx address here.

City **New York** State **NY** ZIP **10022**

0321320476

Try online shipping at fedex.com

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4a Express Package Service To add SATURDAY Delivery, see Section 6. Packages up to 150 lbs. * To meet location.

FedEx Priority Overnight Next business morning. FedEx Standard Overnight Next business afternoon. FedEx First Overnight Earliest next business morning delivery to select locations.

FedEx 2Day Second business day. FedEx Express Saver Third business day. FedEx Envelope rate not available. Minimum charge. One-pound rate.

4b Express Freight Service To add SATURDAY Delivery, see Section 6. Packages over 150 lbs. * To meet location.

FedEx 1Day Freight* Next business day. FedEx 2Day Freight Second business day. FedEx 3Day Freight Third business day.

* Call for Confirmation.

5 Packaging Declared value limit \$500.

FedEx Envelope* FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak. FedEx Box FedEx Tube Other

6 Special Handling Include FedEx address in Section 2.

SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes. Does this shipment contain dangerous goods? No Yes (see attached Shipper's Declaration and Package ID.) Yes Shipper's Declaration not required. Dry Ice Dry Ice, 6 UN 1845 Cargo Aircraft Only

HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight. HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

7 Payment \$/lb. Enter FedEx Acct. No. or Credit Card No. below.

Sender Acct. No. in Section 1 will be billed. Recipient Third Party Credit Card Cash/Check

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages Total Weight Total Declared Value*

\$.00

*Our liability is limited to \$100 unless you declare a higher value. See back for details. FedEx Use Only

8 NEW Residential Delivery Signature Options If you require a signature, check Direct or Indirect.

No Signature Required Packages may be left without obtaining a signature for delivery. Direct Signature Anyone at recipient's address may sign for delivery. Fee applies. Indirect Signature If you are available at recipient's address, someone at a neighboring address may sign for delivery. Fee applies.

519

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

April 17, 2006

Peter Pennoyer Architects
432 Park Avenue South, 11th Floor
New York, NY 10016

Attention: Mr. Peter Pennoyer

Re: Request for Proposals
Architectural Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Gentlemen:

Enclosed please find two copies of the Request for Proposals
in connection with the above-referenced project.

Please note that the proposals are due no later than 1 p.m.,
May³¹, 2006.

Sincerely,



Richard Prisco
Assistant Vice President

enclosures

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

AREA CODE 212-720-5000

April 17, 2006

Allan Greenberg Architect
150 East 58th Street
New York, NY 10155

Attention: Mr. Allan Greenberg

Re: Request for Proposals
Architectural Services
Restoration/Renovation of the Main Building's
10th and 11th Floors

Gentlemen:

Enclosed please find two copies of the Request for Proposals
in connection with the above-referenced project.

Please note that the proposals are due no later than 1 p.m.,
May 3rd, 2006.

Sincerely,



Richard Prisco
Assistant Vice President

enclosures

NO POUCH NEEDED. See back for peel and stick application instructions.

FedEx. US Airbill

Express Tracking Number 8544 5706 2592



1 From *4-18-06* Sender's FedEx Account Number *2416-8519-5*

Sender's Name *Joseph Czacki* Phone *(212) 720-5812*

Company *FEDERAL RESERVE BANK/REGS*

Address *33 LIBERTY ST - Main Bldg, 2m*

City *NEW YORK* State *NY* ZIP *10045*

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name *Peter Penroyer* Phone *212 779-9765*

Company *Peter Penroyer Architects*

Address *432 Park Avenue South - 11th Fl*

City *New York* State *ny* ZIP *10016*

0321320476

Try online shipping at fedex.com

By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. Questions? Go to our Web site at fedex.com or call 1.800.GoFedEx 1.800.463.3339.

4a Express Package Service To add SATURDAY Delivery, see Section 8. Packages up to 150 lbs. FedEx Priority Overnight FedEx Standard Overnight FedEx First Overnight

FedEx 2Day FedEx Express Saver

4b Express Freight Service To add SATURDAY Delivery, see Section 8. Packages over 150 lbs. FedEx 1Day Freight FedEx 2Day Freight FedEx 3Day Freight

5 Packaging FedEx Envelope FedEx Pak FedEx Box FedEx Tube Other

6 Special Handling SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes. HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight. HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

No Yes Yes Dry Ice Cargo Aircraft Only

7 Payment Sender Recipient Third Party Credit Card Cash/Check

Total Packages Total Weight Total Declared Value \$.00

8 NEW Residential Delivery Signature Options

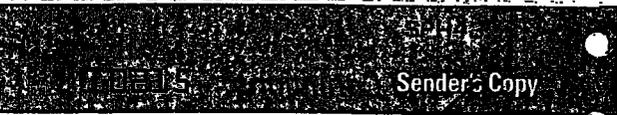
No Signature Required Direct Signature Indirect Signature

519

NO POUCH NEEDED. See back for peel and stick application instructions.

FedEx. US Airbill

Express Tracking Number 8544 5706 2607



1 From *4-18-06* Sender's FedEx Account Number *2416-8519-5*

Sender's Name *Joseph Czacki* Phone *(212) 720-5812*

Company *FEDERAL RESERVE BANK/REGS*

Address *33 LIBERTY ST - Main Bldg. - 2m*

City *NEW YORK* State *NY* ZIP *10045*

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name *Allan Greenberg* Phone *212 355-0057*

Company *Allan Greenberg Architect*

Address *150 East 58th Street*

City *New York* State *ny* ZIP *10155*

0321320476

Try online shipping at fedex.com

By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. Questions? Go to our Web site at fedex.com or call 1.800.GoFedEx 1.800.463.3339.

4a Express Package Service To add SATURDAY Delivery, see Section 8. Packages up to 150 lbs. FedEx Priority Overnight FedEx Standard Overnight FedEx First Overnight

FedEx 2Day FedEx Express Saver

4b Express Freight Service To add SATURDAY Delivery, see Section 8. Packages over 150 lbs. FedEx 1Day Freight FedEx 2Day Freight FedEx 3Day Freight

5 Packaging FedEx Envelope FedEx Pak FedEx Box FedEx Tube Other

6 Special Handling SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes. HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight. HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

No Yes Yes Dry Ice Cargo Aircraft Only

7 Payment Sender Recipient Third Party Credit Card Cash/Check

Total Packages Total Weight Total Declared Value \$.00

8 NEW Residential Delivery Signature Options

No Signature Required Direct Signature Indirect Signature

519

FedEx. US Airbill

Express

FedEx Tracking Number

8544 5706 2618

1 From 47-18-06 Sender's FedEx Account Number 2416-8519-5
 Date
 Sender's Name Joseph Dezaacki Phone (212) 720-5812
 Company FEDERAL RESERVE BANK/REGS
 Address 33 LIBERTY ST - Main Bldg, 2m
 City NEW YORK State NY ZIP 10045

2 Your Internal Billing Reference

Print 34 characters will appear on invoice.

3 To Recipient's Name Thomas Noble Phone (202) 337-0010
 Company Allan Brumberg Architects
 Recipient's Address 1050 Thomas Jefferson Blvd, NW
 We cannot deliver to P.O. boxes or ZIP codes.
 Address 222
 City Washington State DC ZIP 20007

To request a package with a special label, please print FedEx address here.

City Washington State DC ZIP 20007
 0321320476

Try online shipping at fedex.com

By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. Questions? Go to our Web site at fedex.com or call 1.800.GoFedEx.1.800.463.3338.

SPH43
 Sender's Copy
 0215

4a Express Package Service To add SATURDAY Delivery, see Section 6.
 FedEx Priority Overnight Next business morning.
 FedEx Standard Overnight Next business afternoon.
 FedEx Express SaverSM Next business day.
 FedEx EnvelopeSM Next business day.
 FedEx TubeSM Next business day.
 FedEx 2DaySM Second business day.
 FedEx 2Day FreightSM Second business day.
 FedEx 3Day FreightSM Third business day.
 Packages up to 150 lbs. FedEx First Overnight delivery to select locations.

4b Express Freight Service To add SATURDAY Delivery, see Section 6.
 Packages over 150 lbs. in most locations.
 FedEx 1Day FreightSM Next business day.
 FedEx 2Day FreightSM Second business day.
 FedEx 3Day FreightSM Third business day.
 * Call for destination.

5 Packaging
 FedEx EnvelopeSM
 FedEx Flat PackSM FedEx Large Flat and FedEx Sure Pak.
 FedEx Box
 FedEx TubeSM
 Other
 * Declare value limit 200.

6 Special Handling
 SATURDAY Delivery Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 3Day, and FedEx First Overnight. Does this shipment contain dangerous goods? (This box must be checked.)
 No Yes (See Restricted Shipper's Declaration, not required.)
 Dry Ice (Dry Ice 4, UN 1845)
 Cargo Aircraft Only
 HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.
 HOLD Weekend at FedEx Location NOT Available for FedEx First Overnight.

7 Payment, Bill to:
 Sender (Bill to Shipper)
 Recipient
 Third Party
 Credit Card
 Cash/Check
 FedEx Acct. No. _____
 Credit Card No. _____
 Total Packages _____ Total Weight _____ Total Declared Value \$ _____
 FedEx Use Only

8 NEW Residential Delivery Signature Options If you require a signature, check Direct or Indirect.
 Your liability is limited to \$100 unless you indicate a higher value. See back for details.
 No Signature Required
 Direct Signature (Requires a return address and a recipient's address. An adult signature may also be required for delivery.)
 Indirect Signature (Requires a return address and a recipient's address. An adult signature may also be required for delivery.)
 FedEx Use Only

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**FEDERAL RESERVE BANK OF NEW YORK
CONTRACT RIDER**

The Standard Form Agreement Between Owner and Architect (AIA Document B141, Fourteenth Edition, 1987) (the "Agreement"), dated _____ between _____ (the "Architect") and the Federal Reserve Bank of New York ("Owner") is amended by this Rider as follows. The entire contract between the parties shall consist of the Agreement, any Addendums, and this Rider (the "Contract"). In the event of any inconsistency between the terms of the Agreement and this Rider, the terms of this Rider shall govern.

Article 1. Architect's Responsibilities

After Section 1.1.3 insert the following:

"The Architect shall provide professional services for the project in accordance with the terms and conditions of this Contract."

Article 2. Scope of Architect's Basic Services

Add the following at the end of Section 2.1.1:

"The Architect shall not proceed from phase to phase as described below until the Owner has approved in writing the work performed by the Architect and the Construction budgets."

Add the following new sections to Article 2.1:

2.1.2. "Main Building" means the Federal Reserve Bank of New York building located at 33 Liberty Street.

2.1.3 "Project" means the architectural/engineering services performed in connection with the (the "Project"). Without limiting the foregoing, "Project" shall include the overall undertaking in which the Architect, Owner, and others will participate to complete the necessary services required for restoration/renovation of the 10th and 11th floors of the Main Building.

2.1.4. "Owner" means the Federal Reserve Bank of New York, represented by its duly authorized agents.

Architect: _____ Bank: _____

Date: _____ Date: _____

Add the following after Section 2.2:

2.2.0.1. The Architect shall provide the Owner with a time schedule covering the schematic design phase, design development phase, construction documents phase, bidding or negotiation phase, and the construction phase for the Project including a time allowance for the review by the Board of Governors.

2.2.0.2. The Architect shall conduct a site survey that should include a review and corroboration of the accuracy of available drawings and specifications or other information furnished by the Owner, existing conditions or facilities or to make measured drawings thereof, and interview Owner personnel where applicable.

Section 2.5.1. is deleted in its entirety and replaced with the following new sections:

2.5.1. Upon Owner approval of construction documents, the Architect shall assist the Construction Manager in solicitation of bids in accordance with the procedures set forth in the AIA Documents and Owner General Terms and Conditions. The Architect shall attend the pre-bid conference and respond to any questions and requests for clarification that the bidders may submit.

2.5.2. The Architect shall attend the Bid Opening if so requested by the Owner.

2.5.3. The Architect shall assist the Owner in tabulating and evaluating construction bid proposals. The Architect shall also assist the Owner in the preparation of all contracts for construction.

2.5.4. The Architect shall review Board of Governors comments and prepare a response thereto.

Section 2.6.1. Delete entirely and substitute with the following:

2.6.1. For each component of the Project, the Construction Phase shall commence with the acceptance by the Owner of the Construction Manager's Guaranteed Maximum Price and, together with the Architect's obligation to provide the Basic Services under this Agreement, will terminate when final payment to the Architect is due, or in absence of a final Certificate for Payment or of such due date, sixty (60) days after the Date of Substantial Completion of the Work, whichever occurs first.

Section 2.6.2. Insert after "current as of the date of this Agreement," the following: "as it may be amended for this Project."

Architect: _____ Bank: _____

Date: _____ Date: _____

Section 2.6.3. Add the following:

“Provided, however, the Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect’s Construction Phase responsibility to the extent set forth in written notice to the Architect. The Architect shall no longer bear responsibility unless, until and only to the extent that the Architect shall be redirected to resume responsibility by the Owner. Except with respect to the quasi-judicial authority granted to the Architect herein, the Architect shall not exercise any of its prerogatives or duties in such manner as to increase cost to the Owner of constructing the Project without Owner’s prior written approval.”

Add the following at the end of Section 2.6.12:

“The Architect shall forward to the Owner a copy of all such submittals for the Owner’s comments and permanent records.”

Section 2.6.19. Delete entirely and replace with the following:

“The Architect shall secure the release of liens and closeout of the project, including determination of the Date of Substantial Completion and final completion, review of the written guarantees and related documents and issuance of the final Certificate for Payment.”

Add the following immediately after Section 2.6.19:

Section 2.6.20 The Owner shall contract for such services as asbestos abatement design documents and 3rd party air monitoring required by local codes, if needed.

Article 3. Additional Services

Sections 3.4.6. and 3.4.7. Delete entirely.

Article 4. Owner’s Responsibilities

Sections 4.5 through 4.9. Delete entirely.

Section 4.10. Add the following:

“Provided, however, this section shall apply only to such knowledge of fault, defect or nonconformance as may be obtained by the Owner’s representative or his designee and the Owner shall have no obligation to investigate for the purpose of becoming aware of fault or defects.”

Architect: _____ Bank: _____

Date: _____ Date: _____

Article 6. Use of Architect's Drawings, Specifications and Other Documents

Section 6.1. Delete the last sentence thereto and add:

“The Owner may also use the Drawings and Specifications with respect to construction, maintenance, repair and modification of the Project. At the conclusion of the Project or other termination of this Agreement, the Architect shall promptly return any and all Plans to the Bank, including any Plans that it has shared with, released to, or otherwise provided to any third party.”

Article 7. Arbitration

Section 7.1. Delete entirely and substitute with the following:

“At the exclusive option of the Owner, all claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties agree otherwise. Any and all arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Agreement to the extent necessary to the final resolution of the matter in controversy. The Owner shall include an arbitration and consolidation provision in the Owner-Contractor Agreement and shall provide that similar provisions be included in subcontracts and Purchase Orders. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under the prevailing arbitration law.”

Section 7.3. Delete entirely.

Add the following new section immediately after Section 7.4:

Section 7.5. At the Owner's exclusive option, the location for settlement of any and all claims, controversies or disputes arising out of or related to this Agreement or any breach thereof whether by arbitration or litigation shall be New York, New York.

Article 8. Termination, Suspension or Abandonment

Section 8.1. Delete “not less than seven days” in line 2.

Section 8.3. Delete the first sentence and substitute with the following:

Architect: _____ Bank: _____

Date: _____ Date: _____

“This Agreement may be terminated by the Owner without cause immediately upon written notice to the Architect unless otherwise provided in the notice.”

Section 8.7. Delete everything following the word “termination” in line three and place a period following “termination.”

Article 9. Miscellaneous Provisions

Delete Section 9.1 entirely and substitute with the following:

“Unless otherwise specified, this Agreement and the rights and obligations under this Agreement shall be governed by and construed in accordance with the Federal law of the United States of America and, in absence of controlling Federal law, in accordance with the law of New York, notwithstanding new York’s choice of law rules.”

Section 9.4. Delete in lines 6 and 7 “the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement” and insert in its place “the Owner-Contractor Agreement to the extent that Agreement is effective.”

Section 9.9. Delete entirely and substitute with the following:

“The Architect shall not refer to the Owner or any part of the Federal Reserve System in any publication or advertisement and shall not publicize its role in the Project without the Owner’s prior written consent.”

Article 10. Payments to the Architect

After Section 10.1.1. insert the following section:

10.1.2. The Architect shall obtain written authorization of the Owner before paying overtime premium to his employees and agents, where such cost is to be charged as additional fee to the Owner.

Section 10.2.1.6. Delete in its entirety and replace with the following: “Computer-aided design and drafting equipment time when used in connection with this project shall be included in the Basic Services and is not a reimbursable expense.”

Section 10.5.1. Delete the phrase “Architect has been found to be liable” and replace it with the phrase “Owner determines, in its sole discretion, that the Architect is responsible for.”

Architect: _____ Bank: _____

Date: _____ Date: _____

Section 10.6.1. Insert the following at the end thereof:

“and retained for the period of five (5) years from completion of the project.”

Section 10.6.1. Add the following:

“Such records shall be subject to Owner audit upon reasonable notification for the purpose of determining the accuracy of statements submitted.”

Article 11. Basis of Compensation

11.5.2. In the first line, delete the phrase “Architect’s invoice” and replace it with “Owner’s receipt of a proper invoice from the Architect.” Delete the second sentence in its entirety.

Article 12. Other Conditions or Services

Add the following:

Section 12.1. **INSURANCE:** The Architect shall purchase and maintain, as primary Insurance, minimum limits of Insurance as set forth below to protect itself from claims arising out of or resulting from the Architect’s operations under the Contract, whether such operations are undertaken by the Architect any Subcontractors, and/or by any person and/or entity for which any of the foregoing may be liable:

- 1) Claims under workers compensation, disability benefits, and other similar employee benefit acts;
- 2) Claims for damages for bodily injury, occupational sickness or disease, or the death of any employee of the Architect and/or any Subcontractors;
- 3) Claims for damages for of bodily injury, occupational sickness or disease, or the death of any person other than an employee of the Architect or Subcontractor.
- 4) Claims for damages for Personal and Advertising injury which are:
 - (a) Sustained by any person as a result of an occurrence directly or indirectly related to the employment of such person by the Architect and/or,
 - (b) Sustained by any other person.

Architect: _____ Bank: _____

Date: _____ Date: _____

- 5) Claims for damage to the Work, including loss of use, and including the cost to remove, replace, or restore the Work, which arise from injury to or destruction of tangible property, or arise from the inadequate installation of, or provision of, or defects in, or defects in design of, the Work,
- 6) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and/or
- 7) Claims for damages because of bodily injury or death of any person or because of property damage arising out of any motor vehicle, machinery or equipment.
- 8) Claims for damages, including Rip & Tear and including Loss of Use, which arise out of defects in engineering or architectural design.

Insurance Definitions

“Advertising Injury” – An injury arising from advertising activities, employee publications and all other oral, written, televised, videotaped, electrically transmitted or any otherwise disseminated materials, for: Libel, slander, defamation, or disparagement; Violation of right of privacy; Misappropriation of ideas; Infringement of copyright, trademark, title, or slogan; or Unfair competition.

“Bodily Injury” – The definition of bodily injury is to include physical injury, sickness, disease, death, mental injury, emotional anguish, shock or humiliation.

“Occurrence” -- An event, or continuous or repeated exposure to conditions, which cause injury during the Policy period. All such exposure to substantially the same general conditions at or emanating from the insured location or insured project shall be deemed one “occurrence.”

“Personal Injury” – Injury sustained as a result of wrongful eviction, false arrest, detention or imprisonment, malicious prosecution, libel, slander or defamation, invasion of privacy, wrongful entry or dismissal, or discrimination.

“Property Damage” – All risk of physical loss of or damage to real and personal property, including the loss of use thereof.

Workers’ Compensation and Employer’s Liability Insurance as required by all applicable local, state and/or federal laws, and including a Voluntary Employers Liability Rider. All certificates of insurance must specifically note that the statutory provisions of the state or district where the Work is located apply. The

Architect: _____ Bank: _____

Date: _____ Date: _____

Employer's Liability Insurance shall be written for no less than the following limits, or for an unlimited amount if allowable by the appropriate state of jurisdiction:

- (a) Bodily Injury by Accident - \$1,000,000 Each Accident
- (b) Bodily Injury by Disease - \$1,000,000 Policy Limit
- (c) Bodily Injury by Disease - \$1,000,000 Each Employee

Comprehensive General Liability Insurance (broad form), written on an "occurrence" basis, including a per-project/per-location amendment to the general aggregate limit. Such policy shall provide cover for Bodily Injury and Property Damage, and for Personal & Advertising injury:

Minimum Limits of Liability:

- (i) Bodily Injury and Property Damage Per Occurrence
Combined Single Limit: \$1,000,000
- (ii) General Aggregate: \$2,000,000
- (iii) Products and Completed Operations Per Occurrence and
Aggregate: \$2,000,000
- (iv) Personal & Advertising Injury: \$1,000,000
- (v) Medical Payments: \$10,000

The Architect's insurance required under this paragraph shall be written for no less than any limits of liability as herein specified, or as required by law, whichever is greater, by a company or companies licensed to do business in the State of New York, and/or in the district where the Work is located. Such companies shall have a minimum "A-" or better policyholder's rating, and a "Class XI" or better financial rating as listed in the most current edition of the A.M. Best Insurance Guide available on the date of the execution of the Contract.

Comprehensive Automobile Liability insurance, providing coverage for Bodily Injury and Property Damage for claims arising from the operation, use, and/or loading and unloading of any motor vehicle:

- (a) Limit of Liability - \$1,000,000.
- (b) The policy shall contain no exclusion for liability assumed under contract.

Architect: _____ Bank: _____

Date: _____ Date: _____

Excess or Umbrella Liability Insurance in an amount not less than \$25,000,000 following the forms and amounts of primary General Liability, Automobile, and Workers' Compensation and Employers Liability Insurance as described herein.

Professional Errors and Omissions coverage with limits no less than \$5,000,000 per occurrence and \$5,000,000 any aggregate, providing coverage for loss or damage resulting from Architect's professional errors and omissions or wrongful acts committed in the course of advising on any and all environmental matters; and/or wrongful acts committed in the course of rendering, or failing to render, professional services, such as architectural, engineering, surveying, or other such services, which are undertaken in connection with the Contract. Such insurance coverage will include an endorsement warranting that coverage will apply for claims arising during the course of the contract, and for a period of at least two years thereafter. This two year extended claim and reporting period shall not limit the Architect's liability in the event that a wrongful act is discovered after the two-year period, but only limit the strict insurance requirements imposed.

All of the insurance coverage described in this Article maintained by the Architect shall provide that:

- (1) The Owner shall be included in the policy as Additional Insured, as its interest may appear, with the understanding that any obligation imposed upon the insured parties, including, but not limited to, the liability to pay premiums, shall be the sole obligations of the Architect and not the Owner;**
- (2) Architect and its Subcontractors expressly waive all rights of subrogation, set-off, and counterclaim against the Owner for damages payable by Insurance obtained pursuant to this Agreement or any insurance coverage's applicable to the work. The policies of insurance required to be carried by Architect and all Subcontractors shall provide such Waivers of Subrogation by endorsement or policy language.**
- (3) The Architect's insurance policies shall be endorsed so as to indicate that its policies provide primary and non-contributory coverage for all claims of any type or nature against the Owner, arising out of or resulting from the provision of the Work by the Architect and/or any Subcontractors. Any other valid and collectable insurance which includes the Owner as Named Insured shall in no instance be considered as primary, co-insurance, or contributing insurance. (The Architect's policy may allow the Subcontractor's policy to provide primary cover in the event of a claim arising from the Subcontractor's negligence.) These policies**

Architect: _____ Bank: _____

Date: _____ Date: _____

shall further be endorsed to allow Cross-Claim and Severability of Interest Endorsements for claims due to the actions and/or inaction of the Architect and/or any Subcontractor.

- (4) All losses shall be payable without restriction on the nature of the Work, the occupation of the Architect or use of the Work and/or the site, or portion(s) thereof.

The Architect shall require each of the Subcontractors to procure and maintain Insurance coverage with Terms and Conditions equal to or exceeding those specified above. Such coverage shall remain in effect until the approved completion of such Subcontractor's portion of the Work, and for an extended period, as specified above, for exposure arising from the completed operations. The Architect shall be solely responsible for ensuring that each such Subcontractor complies with all of the insurance requirements hereunder. The Architect is further charged with monitoring each Subcontractor's compliance with this provision.

A Certificate of Insurance signed by the insurance carrier or the carrier's authorized agent stating the limits of the liability and the expiration date of each coverage, and warranting the Architect's compliance with the above specified provisions shall be delivered to the Owner prior to the commencement of the Work. Additionally, such carrier or such authorized agent shall provide a warranty statement that the insurance requirements under this Article have been fully met and are covered under such certificate. Should the initial insurance policy expire prior to the final completion of the Work, a renewal certificate and additional warranty statement shall be furnished to the Owner not later than 30 days prior to such expiration date. All certificates shall contain a provision that coverage shall not be canceled, materially amended, or allowed to expire without at least sixty (60) days prior written notice to the Owner.

The Architect shall, at all times through final completion of the Work, carry and maintain, at the Architect's sole expense, full replacement cost coverages for damages to or loss of the Architect's assets, including tools, equipment, material, and facilities required for his provision of the Work.

The Owner shall continue to occupy or use a portion or portions of the Work prior to Substantial Completion thereof. The Architect shall insure that the insurance company or companies providing the property insurance have consented to this occupancy and use by endorsement to the policy or policies. The insurance shall not be canceled or lapsed on account of such partial occupancy or use.

Architect: _____ Bank: _____

Date: _____ Date: _____

Compliance by the Architect with the insurance requirements set forth in this Article shall not relieve the Architect of any liability arising from any indemnity or other such agreement as set forth in the contract documents, nor shall the Architect's liability, be limited by the amount of any applicable insurance.

If the General Liability coverages are provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment.

Section 12.1.1. OTHER INSURANCE: The Owner shall not be obligated to procure or maintain any form of fire (property), liability, or other insurance.

Section 12.2. INDEMNITY: The Architect shall indemnify, defend and hold harmless the Owner in accordance with the following provisions:

- (a) from all loss, cost, expense, liability, injury, damage, or death that may occur or be claimed by or in respect of any party or parties or property including the property of the Owner, to the extent, as determined on a percentage-comparative negligence basis, caused by any negligent act or omission made or done in the course of performance of the services required under this Agreement by the Architect, any employee thereof, or any person or entity retained or engaged by the Architect;
- (b) from all cost or expense that the Owner may incur by virtue of any claim by any consultant retained by the Architect for fees or expenses paid to the Architect and not paid to the architect and not paid to the consultant;
- (c) from all loss, cost, expense or liability that the Owner may incur or suffer as a result of any infringement, on the sole part of the Architect or any person or entity retained or engaged by the Architect, of the patent or copyright laws of the United States of any other country for which the Owner is held legally liable; and
- (d) the Architect's duties under this Section shall in no event exceed the limits of the Architect's applicable insurance coverage then in force at the time the claim for indemnity is made.

Section 12.3. BUY AMERICAN ACT: The Architect understands that the Owner makes it a policy to comply with the Buy American Act (41 U.S.C. 10(a)-10(d) and Executive Order 10582) as amended. The Architect will use his best efforts to specify materials conforming with this policy.

Architect: _____ Bank: _____

Date: _____ Date: _____

Section 12.5. EQUAL EMPLOYMENT OPPORTUNITY: In the performance of the Agreement, the Architect agrees that with respect to the work the Architect will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin.

Section 12.5.2. The Architect shall, in all solicitations or advertisements for employees placed by them or on their behalf for this Project, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

Section 12.5.3. Failure of the Architect to comply with the provisions of the "Equal Employment Opportunity" clause may result in a determination that the Architect is in default. In the event of default on the basis of noncompliance with the provisions of this clause, the Owner shall have the right to terminate the contract, as well as any other rights and remedies provided elsewhere in this Agreement in the event of default by the Architect.

Section 12.6. Throughout the course of the Project, the Architect shall prepare a written record of conferences and meetings between the Owner and the Architect showing decisions, approvals, and conclusions made on Project work.

Section 12.7. All parties designated by the Architect to maintain liaison with the Owner must be acceptable to the latter and the Architect shall submit the name and professional background of each consultant retained by the Architect to the Owner for approval prior to his participation in the Project.

Section 12.8. The Owner expressly reserves the right to engage, hire, or retain any consultant or consultants to assist in the Project and the Architect agrees to cooperate with these consultants.

Section 12.9. NOTICES: All notices, acknowledgments, confirmations, and other communications contemplated herein shall be reduced in writing by the acting party and shall be effective when placed in the United States mail, postage prepaid, addressed as following:

Architect: _____

Architect: _____ Bank: _____

Date: _____ Date: _____

**Owner: Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045
Attention: Richard Prisco, Building Services Officer**

Section 12.10. TAXES: Notwithstanding any provisions to the contrary, the Owner shall not be billed for or obligated to pay any taxes, including local, State or Federal sales, use or gross receipt taxes, from which the Owner, as a Federal Reserve Bank, is exempt pursuant to Section 7 of the Federal Reserve Act (12 U.S.C. § 531).

Section 12.11.1. SMALL BUSINESS AND DISADVANTAGED SMALL BUSINESS: Owner has a policy of assisting small businesses and disadvantaged small businesses in participating in the performance of its contracts.

Section 12.11.2. The Architect agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this Agreement. The Architect further agrees to furnish to the Owner information demonstrating the Architect's compliance with this clause, upon request by the Owner.

Section 12.11.3. As used in this Agreement, the term "small business" means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term "disadvantaged small business" means a small business-

- (1) at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent of the stock of the business is owned by one or more socially disadvantaged individuals; and
- (2) whose management and daily business operations are controlled by one or more such individuals.

The Architect shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic American, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

Section 12.11.4. The Architect acting in good faith may rely on written representations by subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

Architect: _____ Bank: _____

Date: _____ Date: _____

Section 12.12. CONFIDENTIALITY: Architect acknowledges that any information regarding the Owner, including but not limited to, its operations, business practices, or security procedures obtained by the Architect, its agents or employees while performing the Agreement are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner's prior written consent.

Section 12.13. RIGHT OF ENTRY: Any person or persons designated by Architect but subject to the reasonable approval of the Owner shall have the right to enter the premises of the Owner during the Owner's business hours and upon notice to the Owner or any other reasonable time agreed to by the Owner and subject to the Owner's reasonable security arrangements. A reasonable, security-related denial or restriction of access by Owner either for security reasons shall not constitute a breach of this Contract or affect Owner's rights or Architect's obligations. Owner may conduct security investigations relating to Architect personnel having access to Owner's facilities similar to investigations conducted with respect to Owner's own employees. Owner may require substitution of Architect agents, employees and representatives for reasons relating to Owner security. It is understood that the person(s) designated by Architect to have access to the Owner's premises will be Architect's personnel, unless the Owner is notified and agrees to the contrary. The Architect shall also indemnify the Bank for any penalties assessed against the Bank by the Immigration and Nationalization Service with regard to the knowing hiring of unauthorized workers, as well as any legal fees incurred by the Bank in defense of a related investigation by any branch of the United States Government.

Section 12.14. BACKGROUND INVESTIGATIONS: Because of the sensitive and confidential information about the Bank's business affairs, operation and security procedures which the Architect may be given or have access to during the term of this Contract, the Bank will conduct background investigations of the Architect at the Architect's expense. In the Bank's sole discretion, the Bank may conduct more than one such background investigation during the term of this Contract and such investigations may include, but not be limited to, researching the Architect's ownership, business history and record of ethical conduct. If (i) the Architect fails to promptly cooperate with any such background investigations; or (ii) the Bank determines, in its sole discretion, that the results of any background investigation are not satisfactory to the Bank, the Bank may, at its sole option, terminate this Agreement immediately and without any liability on behalf of the Bank, other than to pay the Contract of any services that have been properly rendered under this Contract as of the date of termination. In the event the Bank terminates this Contract in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Architect of the specific results of the background check or why the Bank deemed those results unsatisfactory.

Architect: _____ Bank: _____

Date: _____ Date: _____

IN WITNESS WHEREOF, the parties have duly executed this Contract on the dates set forth below:

AGREED:

AGREED:

FEDERAL RESERVE BANK OF NEW YORK

[SIGNATURE]

[SIGNATURE]

[PRINT NAME]

[PRINT NAME]

[TITLE]

[TITLE]

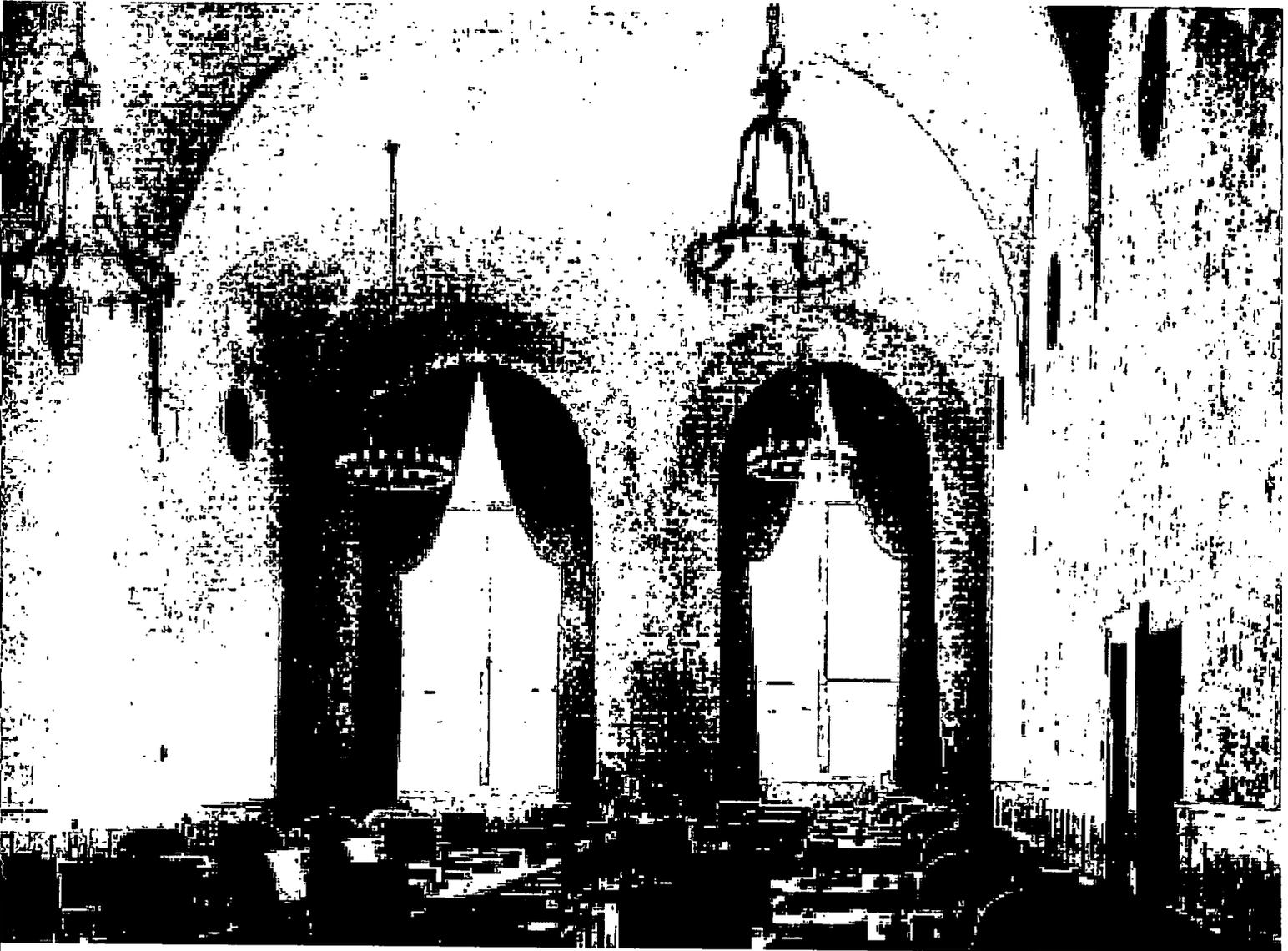
[DATE]

[DATE]

Architect: _____ Bank: _____

Date: _____ Date: _____

Federal Reserve Bank of New York
Request for Proposals
Architectural Services



Restoration/Renovation of the Main Building's
10th and 11th Floors

April 17, 2006

**FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS ("RFP")
FOR
ARCHITECTURAL SERVICES
FOR
RESTORATION/RENOVATION OF THE MAIN BUILDING'S 10TH AND 11TH FLOORS**

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**FEDERAL RESERVE BANK OF NEW YORK
REQUEST FOR PROPOSALS ("RFP")
FOR
ARCHITECTURAL SERVICES
FOR
RESTORATION/RENOVATION OF THE MAIN BUILDING'S 10TH AND 11TH FLOORS**

Introduction

The Federal Reserve Bank of New York (the "Bank") requests proposals for Architectural Services ("Services") which shall include, but not be limited to, planning, analysis, and design services in connection with the proposed restoration/renovation of 10th and 11th floors ("Project") at the Bank's Main Building (the "Main Building") located at 33 Liberty Street, New York, New York.

This Request for Proposals ("RFP") is intended to supply sufficient information to permit Offerors to prepare and submit formal proposals for furnishing Services. This RFP details the specifications, outlines the capacity requirements, lists the factors that will be considered in selecting one or more of the Offerors, outlines the required response format, and specifies contract clauses required by the Bank. To be considered responsive, proposals should include all the information specified in the Proposal Format (Attachment A).

The potential Offerors receiving this RFP are:

- Beyer Blinder Belle Architects and Planners LLP;
- The Hillier Group;
- Gensler;
- Peter Marino and Associates;
- Robert AM Stern Architects LLP;
- Swanke Hayden Connell Architects;
- Allan Greenberg; and
- Peter Pennoyer.

1. Architectural Services

1.1 The Project

The Bank is seeking an architectural firm for the restoration/renovation of the 10th and 11th floors with experience in the preservation and building of American classical buildings. Because the original design of the Bank is based on a Florentine Palazzo model, adapted for modern business requirements, a firm that can treat the preservation of an Italian Renaissance style building and incorporate new designs and technologies within a classical framework will best suit the Project.

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Importantly, the 10th floor of the Bank is the frequent site of visiting dignitaries and the highest level executives from the leading financial firms of the world. In its role as the nation's central bank with wide-ranging responsibilities for the stability of the financial system, the Bank desires to convey an ongoing image of dignity, understated power and public integrity. At the same time, the Bank would like to present itself as a forward-looking organization with a corporate culture that promotes accessibility and open communications.

The Project will involve a delicate balance between restoration and modernization. The Offeror should be respectful of the historic fabric of the 10th and 11th floors while seeking to bring fresh life to the environment. The design solution must conserve crucial historic features, build on the existing architectural tradition, and successfully integrate new elements. In keeping with the original intent of the Main Building program, the design should feature elegant proportions, simple details, colors and materials. The Bank must avoid the appearance of extravagance and high costs while also ensuring the preservation of its historic space.

Firms will need to clearly show their ability to achieve the Bank's main objectives in addition to demonstrating the unique value they can add as manifested in their depth of team, creative expression, and existing body of work related to the modernization of classical buildings.

All contemporary functional and technological needs for the floor must be determined and fulfilled. In practical terms, the restoration/renovated floors should provide the highest level of comfort. Related deficiencies of the existing fit-out include, but are not limited to, long travel distance to the toilet facilities, lack of coordinated food service facilities to support executive dining, lack of a visitor reception area, insufficient conference space and inadequate teleconferencing infrastructure. Additionally, the environmental comfort, fire safety, electrical and communications infrastructure must be updated to the current state-of-the-art without compromising the historic appearance and architecture of the floor. Offices, meeting rooms, and other group spaces should be provided that incorporate state-of-the-art technologies to satisfy current and future executive level requirements.

1.1.A. Additional Project Requirements

In terms of the mechanical, electrical and plumbing ("MEP") and life safety systems, the design should reflect the need to minimize the risk of any interruptions to the occupancy caused by the Main Building systems failure. To that end, it is currently envisioned that the 10th floor will be supported by several fan rooms, located on the 11th floor. The stand-alone sixty (60) ton chiller presently located in the kitchen on the 11th floor will be replaced with a new unit, which is proposed to be incorporated into the existing plant located on the D level.

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New electrical infrastructure, sprinkler and fire alarm systems are required and must be incorporated with the same sensitivities to historic fabric and original design intent, as described above. Incorporation of state-of-the-art technologies for audio-visual, telecommunications, and security are also desired and expected to be integrated into the Project as integral elements woven into the fabric of the design.

The renovated 11th floor shall include a kitchen with lockers and toilet rooms, general office space laid out consistent with the building standards, new toilets, and several mechanical rooms. The new kitchen is currently envisioned as combining the main kitchen located on the 14th floor and the existing executive dining kitchen located on the 11th floor. New executive dining facilities will be required on either the 10th or 11th floors as determined by the Bank's Restoration Committee ("RC").

The design of both floors should meet all the applicable codes, including but not limited to, the Americans with Disabilities Act.

It is expected that for the duration of construction, the occupants of the 10th floor will move to a temporary space that will be built (under a separate contract) on the 13th floor. At the same time, executive dining will move to the 1st floor's Liberty Room.

To minimize inconvenience, overall construction time shall not exceed twelve (12) months.

Construction management services are the desired delivery method for the Project. It is anticipated that the construction manager ("CM") will be selected no later than July 2006.

1.1.B. Existing Environment

Background

The Main Building was designed in 1919 by Philip Sawyer of the noted firm York and Sawyer, and was completed in 1924, with an addition at the east end of the Main Building that defined its current footprint in 1936. The Main building has fifteen (15) floors above grade and four (4) below grade. On the 10th floor, there is a twelve (12) foot deep setback. Except for the 14th and 15th, the floors above the setback are approximately 35,000 usable square feet, including the core.

The Bank has in its possession most of the original construction documents.

The 10th floor currently houses the Bank's executive offices and the boardroom,

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Questions are to be submitted by the time specified in Section 2.1 of this RFP. No other discussion or communication between an Offeror and an employee or officer of the Bank is permitted and no information gained from any such communication may be considered a binding communication of the Bank.

2.3 Intent to Respond

Each Offeror must submit, by the date specified in the Section 2.1 of this RFP, a written statement indicating whether the Offeror intends to submit a proposal responding to this RFP. Submit the statement to the address specified above for submission of questions. The Bank, in its sole discretion, may refuse to consider a proposal submitted by an Offeror who did not submit a timely statement of intent.

2.4 Submission of Proposals

Each Offeror must submit three (3) copies of its proposal sent via certified mail or hand deliver to the address specified above for submission of questions or hand delivered to:

Mr. Richard Prisco, Assistant Vice President
Federal Reserve Bank of New York
Real Estate and General Services Function
33 Liberty Street
New York, NY 10045

to be received no later than 1:00 p.m. on the date specified in Section 2.1 of this RFP..

Proposals received after the exact time for submission will not be considered for award unless the Bank determines that the late receipt was due solely to mishandling by the Bank after receipt at the Bank. The only acceptable evidence of the time of receipt is the time/date stamp of the Bank on the proposal envelope or other documentary evidence of receipt maintained by the Bank.

Each copy of the proposal must be properly executed and any alterations formally explained and initialed by the Offeror. All three (3) copies must be submitted in a sealed envelope within a sealed envelope. The inner envelope must be clearly labeled "Proposal for Architectural Services for the Restoration/Renovation of the Main Building's 10th and 11th Floors, DO NOT OPEN." Proposals will not be opened prior to the deadline specified for receipt.

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An Offeror, by submitting a proposal, represents that:

- The Offeror has examined and understands this RFP;
- The proposal is based upon the requirements described in this RFP;
- All terms and conditions set forth in this RFP, including all Appendices, Attachments, Exhibits and Addenda are accepted and incorporated in the proposal unless the proposal explicitly takes exception to them; and
- The Offeror possesses the technical capabilities, equipment, financial resources and personnel to provide Services offered by the Offeror.

Because the Bank may select a proposal or reject all proposals without further discussions with Offerors, Offerors should present their proposals initially in the most favorable possible terms from both a technical and price viewpoint.

2.5 Amendment or Withdrawal of the RFP

Corrections or clarifications to this RFP will be issued in the form of written Addenda to this RFP and will be sent by certified or registered mail to all Offerors who have indicated an intent to submit a proposal. Receipt of all Addenda should be acknowledged in the proposal. If an Offeror fails to acknowledge receipt of any Addenda, their proposal will nevertheless be construed as though the Addenda had been received and acknowledged. No interpretation, correction, clarification, or amendments to the RFP made by other than written Addenda will be binding on the Bank.

Offerors may modify or withdraw their proposals up to the deadline for submission but not after that time. Proposals may not be withdrawn for one hundred fifty (150) days following the deadline for submission.

2.6 Selection of an Offeror

Upon selection of an Offeror, the Bank will notify all Offerors of the selection. The Bank will indicate in general terms the reason why unsuccessful proposals were not accepted.

Selection of an Offeror does not create a contract between the Bank and the

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selected Offeror. The Bank will negotiate a contract with the successful Offeror, which will include the terms specified in Attachment B to this RFP. An Offeror should specify in its proposal any particular amendments it would propose to the terms stated in Attachment B. **BECAUSE CONTRACT TERMS ARE A PART OF THE EVALUATION PROCESS, THE ONLY CONTRACT CHANGES WHICH THE SUCCESSFUL OFFEROR WILL BE PERMITTED TO PROPOSE AFTER THE AWARD IS MADE ARE THOSE SPECIFICALLY STATED IN DETAIL IN ITS PROPOSAL.** Merely including a copy of the Offeror's standard contract is unacceptable. If an agreement acceptable to the Bank is not reached within thirty (30) days of Offeror selection, the Bank reserves the right to disqualify the selected Offeror and re-evaluate the remaining proposals.

Under the contract, the successful Offeror will furnish the Services specified in this RFP.

The final contract is contingent upon approval by the senior management of this Bank and the concurrence of the Board of Governors of the Federal Reserve System. Absent such approval or concurrence, any award or contract may be canceled without liability on the part of the Bank.

2.7 Determination of Responsibility

The Bank will only select an Offeror that is deemed responsible, in the sole discretion of the Bank. The Bank makes its determination of responsibility based on the following factors, judged as of the time of Offeror's selection and the date specified for the start of contract performance:

- a. the availability of adequate financial resources to perform the contract;
- b. ability to comply with all required or proposed performance schedules, taking into consideration all existing business commitments;
- c. record of satisfactory performance with any entity of the Federal Reserve System or other entities;
- d. satisfactory record of integrity and business ethics;
- e. necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;

- f. necessary professional and support personnel, technical equipment and facilities, professional licenses, and operating authority and insurance coverage or the ability to obtain them; and
- g. other qualifications necessary for eligibility to receive an award under applicable laws and regulations.

Where, in the sole judgment of the Bank, a substantial portion of the contract is to be performed by a subcontractor, the Bank will make a similar determination about the responsibility of the subcontractor. The Offeror, of course, remains responsible for the performance of the subcontractor.

The proposal shall provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent financial statements, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission. The financial statements provided by the Offeror should be audited. If unaudited financial statements are provided, the Bank may conclude that the Offeror is not responsible, even if the financial statements appear to show financial strength. The Offeror should also include other information that it believes demonstrates that the Offeror is responsible. The burden is upon the Offeror to clearly demonstrate that it is responsible. The Bank reserves the right to require such additional information concerning the Offeror's responsibility as the Bank deems necessary.

Because of the sensitive and confidential information about the Bank's business affairs, operations, and security procedures which Offerors may be given or have access to during the bidding process, the Bank will conduct background investigations, at Offeror expense, on all Offerors and their companies. Such investigations may include, but may not be limited to, researching a company's history/ownership and fingerprinting and drug testing of Offeror personnel who will have access to the Bank's premises. In the Bank's sole discretion, no award of a contract will be made to, or if an award has already been made, such award may be withdrawn from, any Offeror: (i) that fails to promptly cooperate to the Bank's satisfaction with any background investigations; or (ii) whose background investigation by the Bank produces results that are not, in the Bank's sole determination, satisfactory to the Bank. In the event the Bank fails to make an award to an Offeror or withdraws an award from an Offeror in connection with an unsatisfactory background check, the Bank shall have no obligation to inform the Offeror of the specific results of the background check or why the Bank deemed those results unsatisfactory.

2.8 Confidential Information

If the Bank receives a request for information from an Offeror regarding the successful proposal, the Bank may disclose bottom-line amounts of an individual Offeror and other information from a proposal to other Offerors or to members of the public after a proposal has been selected. In deciding on disclosure, the Bank will consider whether the Offeror has requested confidentiality and whether disclosure of the information would likely result in substantial competitive harm to the Offeror. If an Offeror wishes to request confidential treatment of certain information, the request must be in writing and submitted with the proposal or amendment containing the information. The request must discuss in detail the justification for the confidential treatment of each item of information for which confidential treatment is requested. This justification must demonstrate that harm would result from the public release of the commercial or financial information; simply stating that the information would result in competitive harm is not sufficient. The Offeror must also state whether the information is available to the public from another source. Information for which confidential treatment is requested must be:

- a. specifically identified in the non-confidential portion of the proposal or amendment (by reference to the confidential portion);
- b. separately bound; and
- c. labeled CONFIDENTIAL.

2.9 Reservation of Rights

The issuance of this RFP and the Bank's receipt of any information or proposals shall not, in any manner, obligate the Bank to perform any act or otherwise incur any liabilities. The Bank assumes no obligation to reimburse or otherwise compensate any Offeror or recipient of this RFP for losses or expenses incurred in connection with this RFP. The Bank shall have the right to use, for any purpose, any information submitted in connection with this RFP.

The Bank reserves the right: (1) withdraw this RFP at any time prior to the execution of a contract; (2) decide not to award a contract to any Offeror; (3) reject a proposal or award the contract without inviting the Offeror to submit a new proposal; (4) negotiate with any source considered qualified; (5) request, orally or in writing, clarification of or additional information concerning proposals that are considered competitive; (6) waive minor informalities or irregularities, or any requirement of the RFP; (7) accept any proposal in part or in total; (8) select a proposal other than the low cost proposal; and (9) reject a proposal that does not conform to the specified format or the other requirements of this RFP.

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Prior to any award, the Bank may require the Offeror to submit or identify in writing price data bearing on the reasonableness of the offer. The Bank reserves the right to have its authorized representatives inspect the facilities and examine any books, documents, papers, records, or other data of the supplier that pertain to and involve transactions relating to the proposal, for the purpose of evaluating the accuracy, completeness, and currency of data supplied.

2.10 Small and Disadvantaged Businesses

The Bank has a policy of encouraging acquisitions from small businesses and socially and economically disadvantaged small businesses (a "Covered Company"). The term "small business" means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and regulations thereunder. The term "socially and economically disadvantaged small business" has the same meaning as defined in Section 8(a) of the Small Business Act (15 U.S.C. § 637(a)). Socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. If an Offeror believes that it is a Covered Company, it should submit the reasons for this conclusion with its proposal.

Under the Bank's policy, the Bank gives preference to a proposal from a Covered Company: a responsive proposal from a responsible Covered Company may be preferred over an otherwise comparable proposal even if the proposal from the Covered Company is marginally more costly. The Bank's contract with the contractor will also require that the contractor follow the Bank's policy on Covered Companies in awarding any subcontracts.

2.11 Service Contract Act

Under the Service Contract Act of 1965 (41 U.S.C. § 351 et seq. (the "Act")) and the regulations promulgated under the Act (29 CFR Part 4) wages and fringe benefits paid to service employees employed by the Offeror in performing the agreement resulting from this RFP must be not less than the minimum wage and not less than those prevailing in the area where services are performed, or, if a collective bargaining agreement covers the service employees, the wages and fringe benefits must be in accordance with the agreement. The Department of Labor determines the level of wages and fringe benefits to be paid to service employees based on the information on Standard Form 98. The selected Offeror will be required to cooperate fully with the Bank by providing any required information and taking any necessary action to obtain a wage determination or otherwise and will be required to comply with the Act, the Regulations, and any wage determination applicable to the agreement.

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3. Evaluation of Proposals

3.1 Objective

The objective of the Bank in soliciting and evaluating proposals for the Project is selection of an architectural firm with experience in the field of interior architecture and historic preservation. The result of the process will be selection of the proposal that, in the view of the Bank, is most advantageous to the Bank and offers the optimum combination of experience, technical ability, depth of corporation, and price.

3.2 Evaluation Process

Only proposals that are received from Offerors that the Bank has determined to be responsible under Section 2.7 of this RFP will be considered for award.

All proposals of responsible Offerors will be examined to determine responsiveness to the Bank's requirements. To be considered responsive, a proposal must satisfy all the mandatory requirements and otherwise be responsive to this RFP. A proposal that is not responsive will be set aside. If, after evaluation of the remaining proposals, the Bank determines that none of the proposals are responsive, the proposals set aside, at the Bank's option, may be reexamined.

The remaining proposals will be further evaluated on the basis of the evaluation criteria in Section 3.3 of this RFP, which are listed in descending order of relative importance. Subsequent to reviewing the proposals and as part of the evaluation, the Bank may interview one or more Offerors. Also subsequent to reviewing the proposals, the Bank may ask two or more Offerors to participate in a charrette designed to present, in a form of sketches, drawings, computer-generated renderings and written narrative the Offerors vision for the Project. In such a case, evaluation of the outcome would be reflected in the final score for the Experience and Technical Ability criterion.

The Bank has a policy of assisting "Covered Companies" as described in Section 2.10 of this RFP. Under that policy, preference in selecting a proposal may be given to a proposal submitted by a Covered Company. In addition, the subcontracting plan submitted with the proposal will be judged based on plans for using Covered Companies and procedures for documenting compliance with the plan.

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3.3 Evaluation Criteria

Responsive proposals will be evaluated on the basis of the following nonexclusive list of criteria. Criteria categories are listed in descending order of relative importance. Where one of the criteria for determining responsibility is repeated here, in this phase of the evaluation, the criterion will be analyzed in terms of the quality with which or the extent to which the criterion is demonstrated.

- Experience and Technical Ability - Demonstrated recent experience in corporate interiors and historic preservation as demonstrated by client satisfaction and quality of completed services, including:
 - Ability to integrate modern building systems and advance technology into sensitive environments;
 - Knowledge of and experience with neoclassical architecture, with an emphasis on Florentine style; and
 - Ability to both sustain historic fabric and give fresh life to the renovated spaces.

- Cost - The overall cost to the Bank of the services furnished. The fee shall be proposed on a "not-to exceed" basis. The statement of costs by the Offeror should be exclusive of taxes from which the Bank is exempt. The Offeror shall list the hourly rates billed for the time of personnel scheduled to participate in the Project, including the Direct Personnel Expense and Overhead and Profit Multipliers. The Offeror shall also itemize the reimbursable expenses and mark up on same (if any).

The successful Offeror will be expected to solicit proposals for engineering and consulting services, including, but not limited to: MEP; structural; lighting; audio-visual; acoustical; telecommunications; food service and cost; and evaluate them in accordance with the selection criteria mutually agreed upon by the Offeror and the Bank. The Architect shall contract, subject to Bank's concurrence, with successful bidders for delivery of those services. The Services of the sub-consultants in the phases subject to this RFP shall be considered a reimbursable expense; however, costs associated with solicitation and evaluation of proposals and processing of appropriate documentation shall be included in the Offeror's "not-to-exceed" amount.

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At its sole discretion, the Bank will negotiate a fee for the Construction Documents, Bidding and Negotiation, Construction Administration and Commissioning Phase services with the successful Offeror.

For the purpose of this proposal, the Offerors should assume that the Project phases subject to this RFP will not take more than twenty-four (24) weeks to complete.

- Proposed Project Team - Professional experience of the individuals proposed to staff the Project.

Past favorable experience with the Bank or other entity of the Federal Reserve System.

Quality of services previously rendered to this Bank or other entity of the Federal Reserve System.

- Depth of Corporation - Availability, professional diversity and competence of the staff.

- Contract Terms - Proposals will be evaluated on the basis whether the contract terms or amendments proposed by the Offeror are significantly less advantageous to the Bank than the terms specified in the Contract. Any proposed changes to the Contract must be stated in detail in the Offeror's proposal. **Because proposed contract terms are a part of the evaluation process, the only Contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal.** Acceptance of an Offeror's proposal does not bind the Bank to accept the Contract changes proposed by that Offeror.

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Proposal Format

This Attachment A specifies the format that should be used to prepare proposals responding to this RFP. The sole purpose of this format is to facilitate the fair and equitable evaluation of all proposals received. At its option, the Bank may consider any significant deviation from this format as non-responsive and disqualify that proposal. Extensive cross-referencing to other documents may be considered nonresponsive. The topical format of all proposals should be as follows:

I. Executive Summary

Provide a brief narrative outlining your company's history, the professional background of all personnel, key consultants and any unique qualifications as pertaining to this Project and any information you may deem helpful to the Bank in its evaluation of your qualifications.

II. Overview

Provide a general overview of your approach to the Bank's goals, as outlined in this RFP. Include an estimated schedule for the delivery of services.

III. Description of Proposed Services

- A. Describe, in detail, how your company would approach this Project;
- B. Include resumes of the Project Team personnel of the Offeror and his sub-contractors. **For each person assigned, the Offeror shall include a statement that, to the best of his knowledge, these personnel will be available for the duration of the Project and assign the percent of their time spent on performing work relative to the Project;**
- C. Identify, in detail, any exclusions to the scope of services;

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- D. Describe how your company deals with fluctuating internal workloads and demands;
- E. Describe how you envision your company's cooperation with the CM in the Schematic and the Design Development Phases; and
- F. List the engineering and specialty consulting companies your company would normally consider for an assignment similar to this Project.

IV. Experience

Since Experience and Technical Ability is one of the selection criteria, discuss in detail your company's background in corporate interiors and historic preservation, including the key areas identified in Section 3.3 of this RFP. Include a description of ten (10) representative projects completed by your company in the past three (3) years including construction cost. For each representative project, provide a brief description, including information regarding the cost, size and completion date.

For each Project, indicate which of the key personnel you propose to assign to this Project that was involved with each representative project and describe their responsibilities for every project. If any key personnel involved with a project listed are no longer with the company, please state so.

List names, addresses and telephone numbers of individuals the Bank may address questions pertaining to each project submitted as reference.

V. Financial Background and Responsibility

The Offeror should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent audited financial statement, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission.

The Offeror should also include information to demonstrate that the Offeror is "responsible" as described in Section 2.7 of this RFP. This should include examples of similar Projects successfully completed, particularly for this Bank or other Reserve Banks.

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This information should include similar information about any subcontractor that will perform a substantial part of the contract.

VI. Costs

The Offeror shall propose his fee on a "not-to-exceed" basis.

The Offeror shall include the following information:

- Hourly rates for his and any subcontractor's personnel scheduled to be assigned to the Project; and
- Itemized list of reimbursable expenses, including the mark-up (if any) on same.

For the purpose of this proposal, the Offerors should assume that the Project phases subject to this RFP will not take more than twenty-four (24) weeks to complete.

The Offerors are advised that the Bank is exempt from all the local and state taxes.

VII. Contract Terms

The Offeror shall specify any contract terms proposed by the Offeror that differ from any terms specified in the Contract. If the Offeror includes a copy of its standard contract the Offeror shall specify which of those terms differ from the terms indicated in the Contract.

Because proposed contract terms are part of the evaluation process, the only Contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal. Acceptance of an Offeror's proposal does not bind the Bank to accept the Contract changes proposed by that Offeror.

VIII. References

The Offeror shall provide the names of at least five (5) customers using the Offeror's Services (including at least three (3) in the metropolitan New York area). The references shall include names, addresses, and telephone numbers of appropriate contacts.

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IX. Miscellaneous

The Offeror shall include any additional information the Offeror deems useful to the Bank in evaluating the proposal. The Offeror may also request confidential treatment of information in the proposal in accordance with Section 2.8 of this RFP. If the Offeror qualifies as a Covered Company as described in Section 2.10 of this RFP, the Offeror shall indicate that in this section and describe the basis for the determination.

The Offeror shall include its plan for using Covered Companies as subcontractors as discussed in Section 2.10 of this RFP and the procedures the Offeror will use to document compliance with the plan.

X. Execution

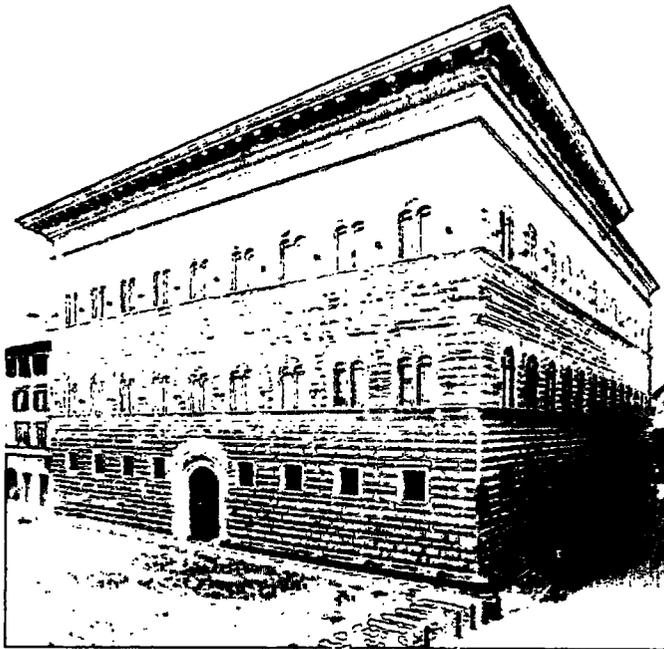
The proposal shall be signed by an authorized representative of the Offeror and include evidence of the authority of such a representative.

Attachment C

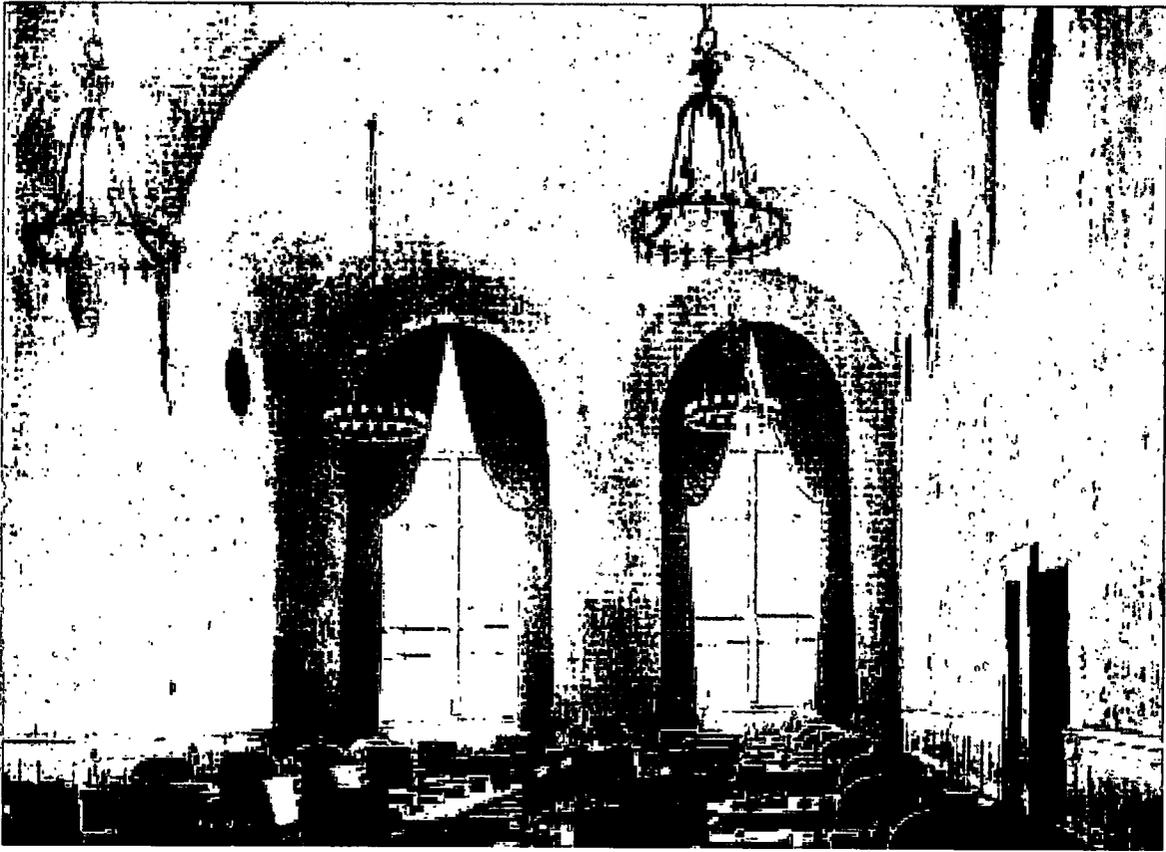
Photographs and Drawings



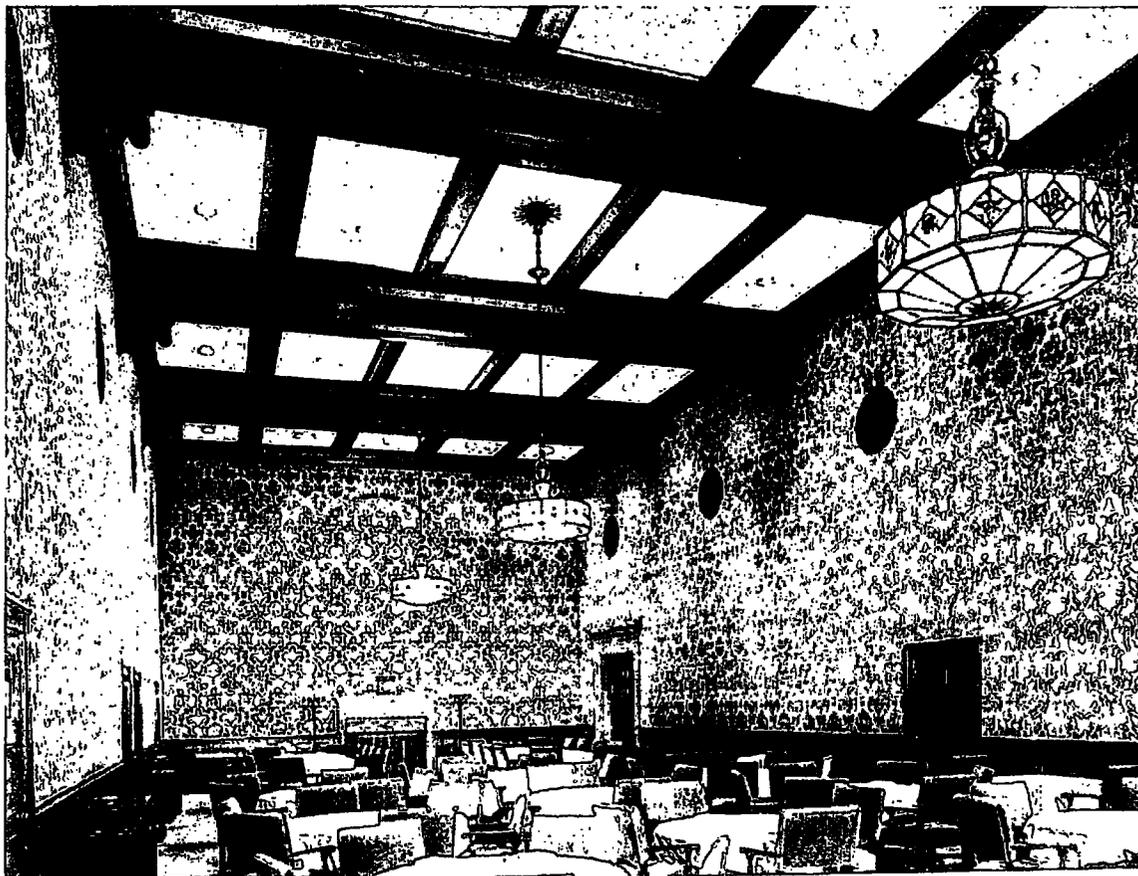
Palazzo Vecchio



Palazzo Strozzi



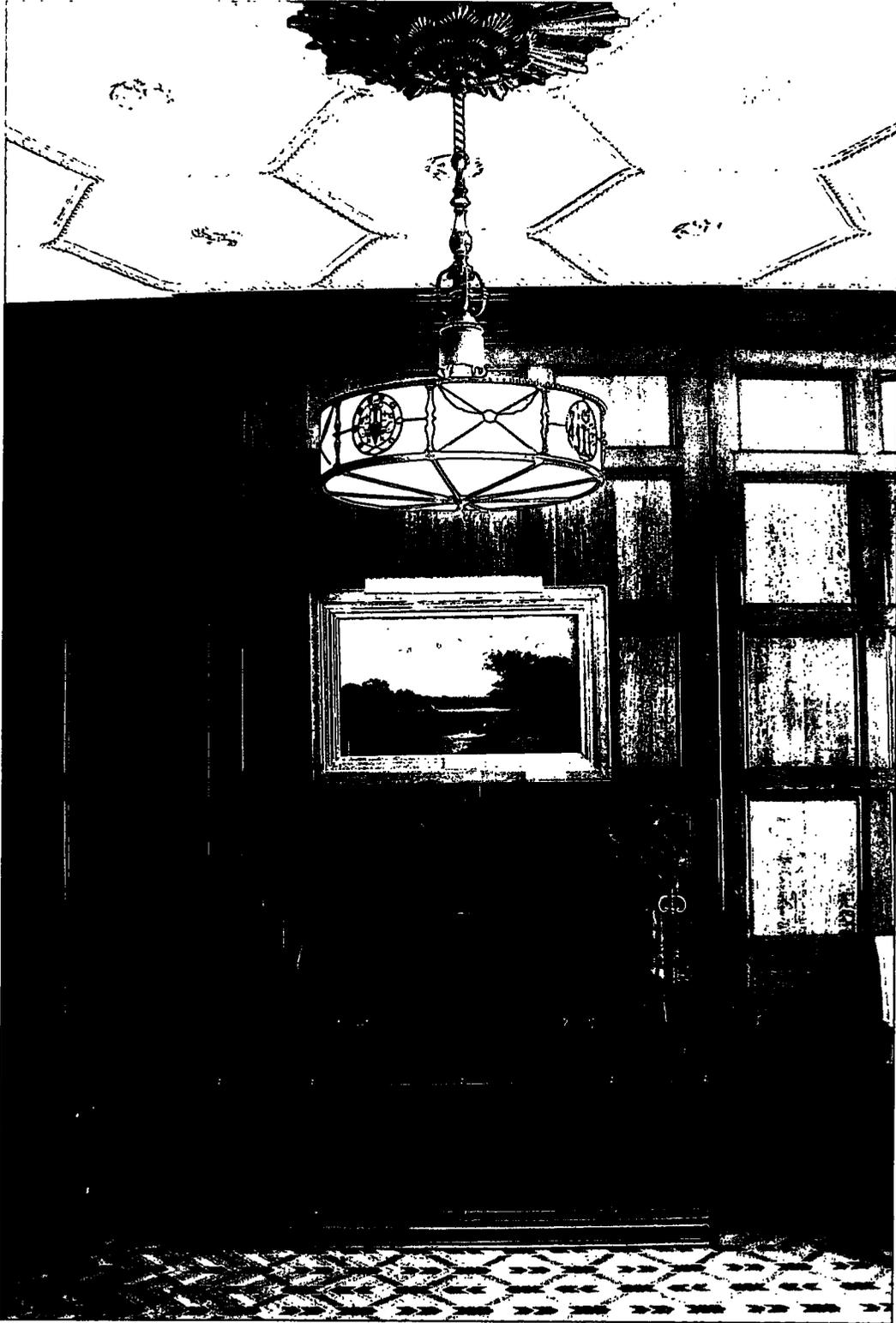
Executive Dining Room in 1920s



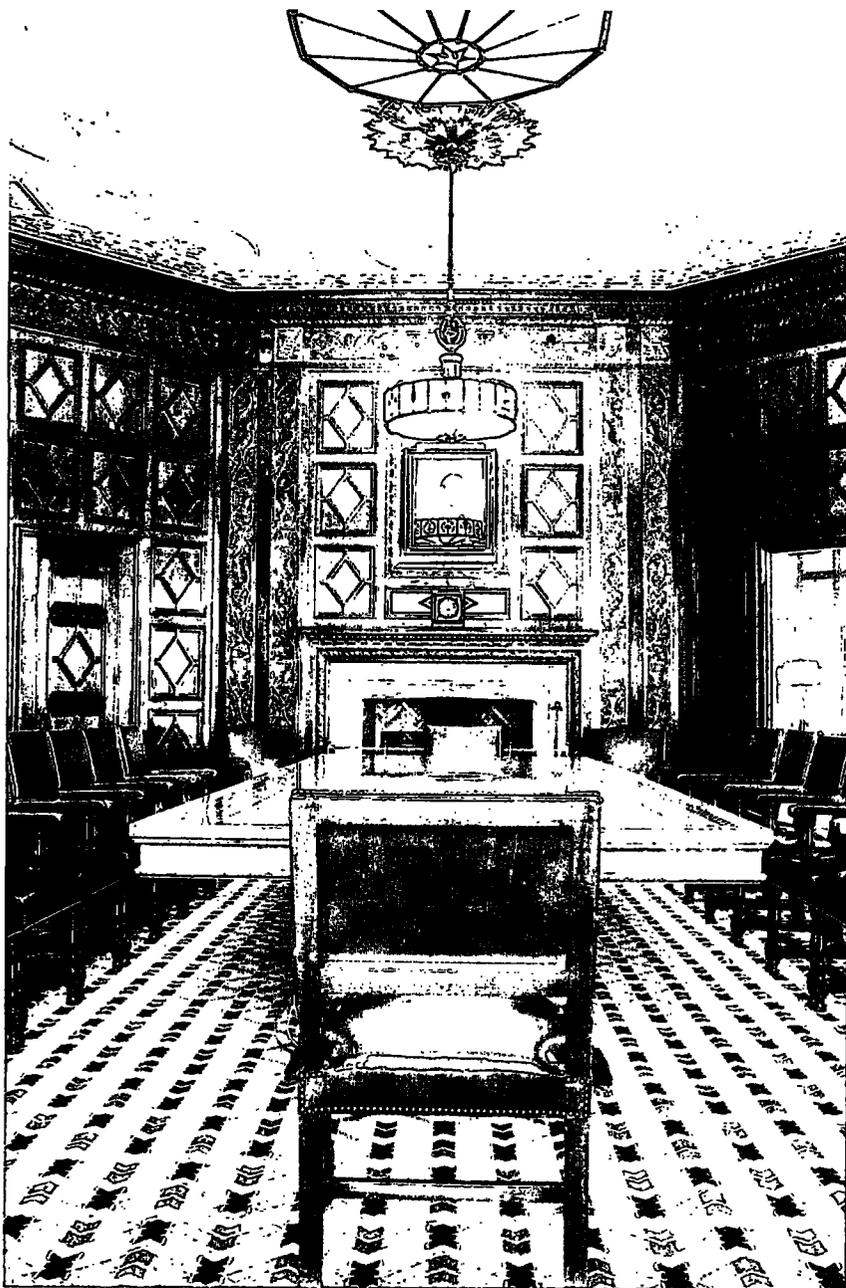
Executive Dining Room



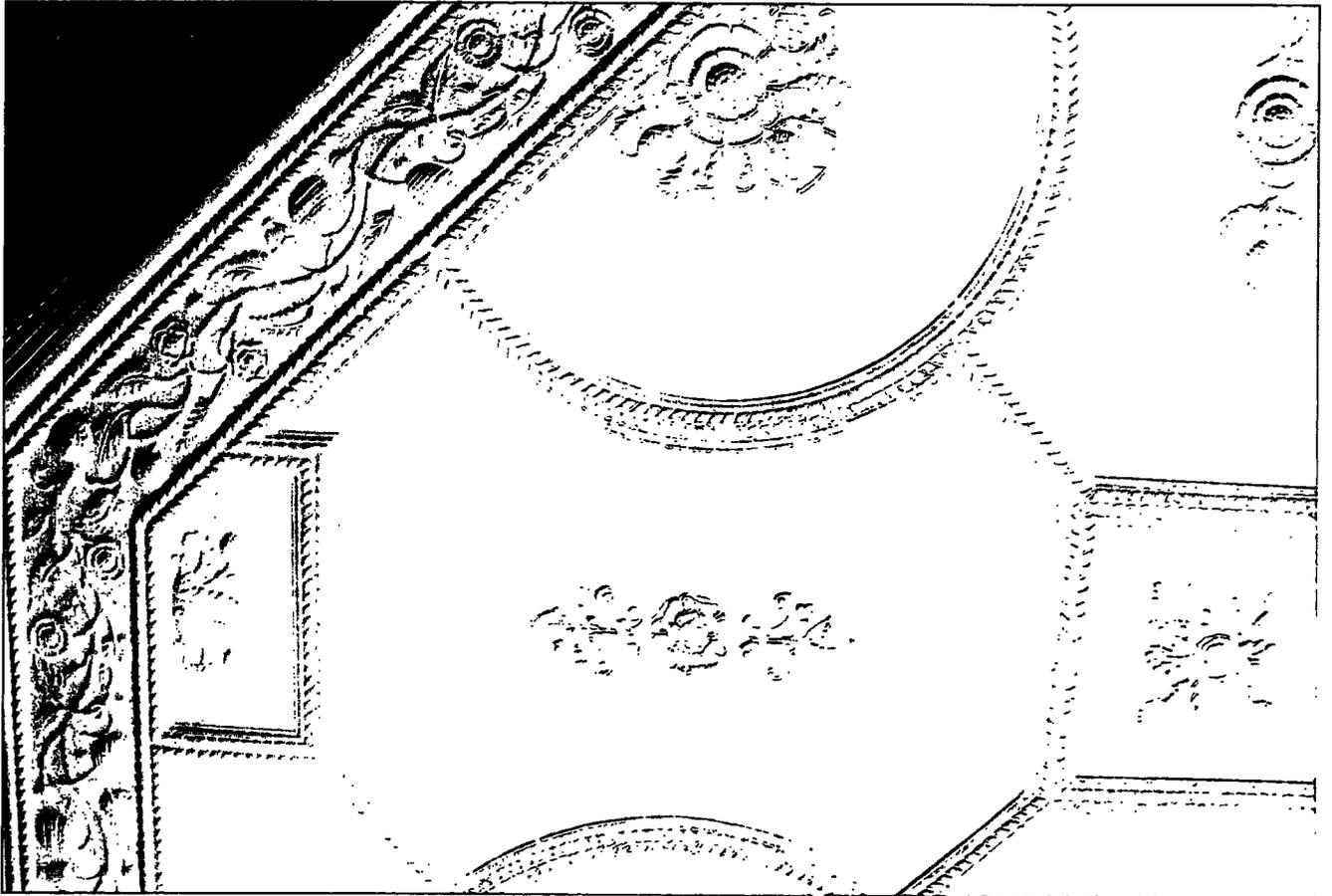
Main Reception Corridor



The Anteroom

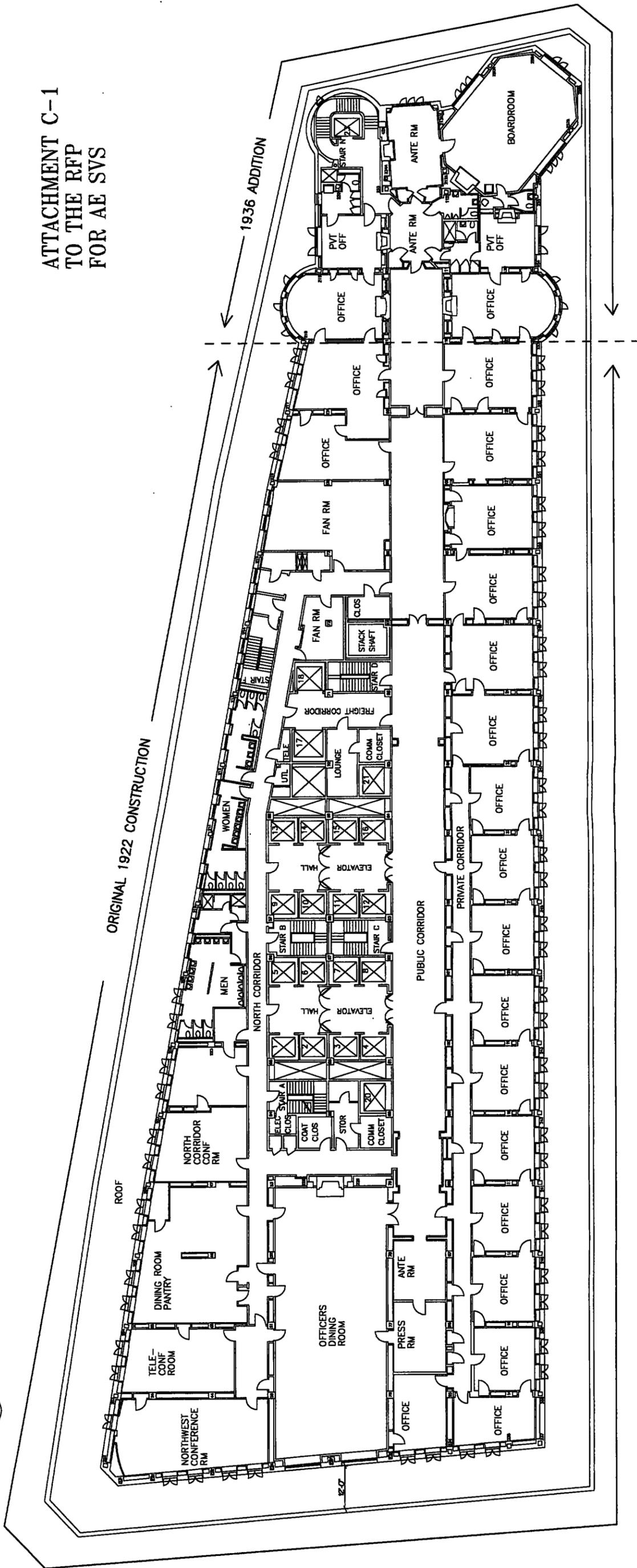


The Boardroom



The Boardroom – ceiling detail

ATTACHMENT C-1
TO THE RFP
FOR AE SVS



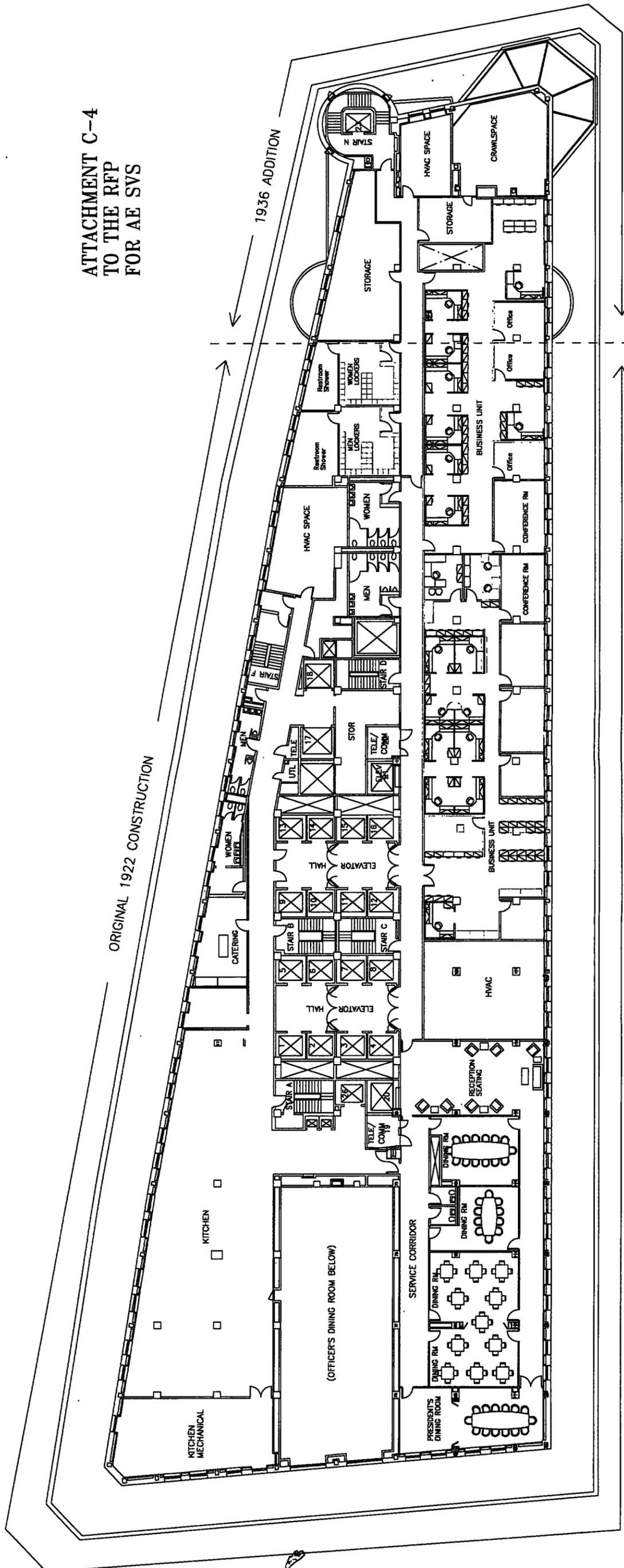
EXISTING CONDITIONS

Projects & Client Services
March 2006
SCALE 1/16" = 1'-0"

THE FEDERAL RESERVE BANK OF NEW YORK

33 LIBERTY STREET
PLAN OF 10TH FLOOR

10



ATTACHMENT C-4
TO THE RFP
FOR AE SVS

ORIGINAL 1922 CONSTRUCTION

1936 ADDITION

PROPOSED PLAN

PROJECTS & CLIENT SERVICES
APRIL 2006
SCALE: NTS

THE FEDERAL RESERVE BANK OF NEW YORK

33 LIBERTY STREET
PLAN OF 11TH FLOOR

11

"The Directors of the Bank desire to avoid the appearance of extravagance and high cost which is frequently associated with a modern bank building. They hope that the competition will result in the selection of an architect who will co-operate with them in that idea, to the end that a building may be constructed which would have the dignity and style which a building of the importance of the leading financial institution that America deserves, but which at the same time, would be free from ostentation and from any attempt to impress through elaboration of detail or through use of costly and showy materials. While it is accepted that the business of the Bank in many of its departments is much like that of a commercial house or mail order establishment, it is felt that the architectural atmosphere, as evidenced by the taste shown in the exterior and interior treatment, should be of a high order and should express the solidity of the financial system of the United States and the high character which are to be carried under its roof."

"On the interior, expense is not to be spared in connection with durable construction and use of fireproof materials. An extensive use of costly marbles and ornamental bronze and metal bronze should be avoided. A certain amount of both of these materials will doubtless be necessary, but it is hoped that this Bank may demonstrate the possibility of the development of a building which, through its simplicity of detail, its beauty of proportion and the taste with which materials and colors are used may set a standard for governmental building, which will be of a far reaching effect." (Program of the architectural competition, as published in the American Architect, Wednesday, November 5, 1919.)

an almost stand-alone structure perched at the south east corner of the space. It also includes an Officer's Dining Room ("ODR"), a two (2) story high space, approximately thirty-one (31) feet wide by seventy-five (75) feet long, used primarily for executive dining functions. The east-west reception corridor ("Reception Corridor") is the floor's main thoroughfare. At the east end, there are two suites occupied by the Bank's President and the First Vice President, while most of the south side of the floor is allocated to the offices of the Executive Vice Presidents. The latter are served by a private corridor parallel to the Reception Corridor.

Since 1948, the walls of the Reception Corridor have been decorated with paintings on loan from the Metropolitan Museum of Art. At the east section, there is a coin and currency exhibit and several glass cases displaying memorabilia related to the original construction project.

At the northwest quadrant of the floor, there are three (3) conference rooms, including a teleconferencing facility and a serving pantry supported by a kitchen located on the 11th floor.

The 10th floor has a significant amount of decorative priceless metalwork hand crafted by the noted craftsman Samuel Yellin, including elevator lobby gates, chandeliers and grilles. Most likely, all of those were installed as a part of the original construction.

The boardroom, ante room (i.e., waiting room/common hallway) and several east end offices have a total of seven (7) fireplaces served by a single duct forced exhaust system. In addition, the ODR has one (1) natural draft fireplace.

The 11th floor currently houses executive dining rooms, a kitchen and general office space. A significant portion of the west end is occupied by the upper portion of the 10th floor's ODR.

The setback roof is accessible from most spaces, although configuration of operable sections of the windows is not ideally suited for that purpose.

The original appearance of the 10th floor was consistent with the requirements of the program of the architectural competition sponsored by the Bank's directors.¹ Those

¹ "The Directors of the Bank desire to avoid the appearance of extravagance and high cost which is frequently associated with a modern bank building. They hope that the competition will result in the selection of an architect who will co-operate with them in that idea, to the end that a building may be constructed which would have the dignity and style which a building of the importance of the leading financial institution that America deserves, but which at the same time, would be free from ostentation and from any attempt to impress through elaboration of detail or through use of costly and showy materials. While it is accepted that the business of the Bank in many of its departments is much like that of a

emphasized avoidance of the appearance of extravagance so commonly associated with bank buildings of the time, as one of the main goals. This is reflected in the austere design of the Reception Corridor, which remains in its original condition to the present day.

The appearance of spaces added in 1936, including the boardroom and ante room (i.e., waiting room/common hallway), are more elaborate with decorative carved wood paneling and embossed metal ceilings.

The sixty (60) ton chiller supporting the ODR is located within the kitchen.

Two (2) sets of dumb waiters connect the kitchen with the 10th floor serving pantry and the 14th floor facility.

To date, the following significant renovations were performed on the 10th floor:

- 1936 East end added;
- 1942 In connection with installation of a HVAC system, the ODR's original under pitched plaster vault ceiling was replaced with a flat one;
- 1972 ODR's ceiling was replaced again, fabric wall covering introduced, a stand-alone chiller installed on the 13th floor;
- 1984 Private toilets reconfigured;
- 1995 Telecommunications risers added in the space made available by removal of two (2) elevator cars;
- 1997 The floor was surveyed by Ehrenkrantz Eckstut and Kuhn Architects

commercial house or mail order establishment, it is felt that the architectural atmosphere, as evidenced by the taste shown in the exterior and interior treatment, should be of a high order and should express the solidity of the financial system of the United States and the high character which are to be carried under its roof."

"On the interior, expense is not to be spared in connection with durable construction and use of fireproof materials. An extensive use of costly marbles and ornamental bronze and metal bronze should be avoided. A certain amount of both of these materials will doubtless be necessary, but it is hoped that this Bank may demonstrate the possibility of the development of a building which, through its simplicity of detail, its beauty of proportion and the taste with which materials and colors are used may set a standard for governmental building, which will be of a far reaching effect." (Program of the architectural competition, as published in the American Architect, Wednesday, November 5, 1919.)

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Architectural Services
Restoration/Renovation of the Main Building's 10th and 11th Floors

("EEK"). The report of examination described in detail the condition of individual spaces.

1998 New toilet partitions installed.

EEK prepared a feasibility study on the subject of the replacement of the ODR ceiling. The study identified historical precedents for the design schemes.

Infrastructure

The existing emergency/uninterruptible power supply consists of four (4) diesel-powered generators and associated switchgear located at the E level and the uninterruptible power source batteries and associated switchgear located at the C level. In addition, the Bank is contracted with Con Edison for on-call services of a mobile Emergency Roll-Up Power Generator ("ERUG"). The ERUG service entrance is located at Liberty Street and the associated switchgear on the E level. The Main Building's air conditioning systems are supported by a chiller plant located on the C level.

On-going Construction Projects

At the present time, the Main Building is undergoing two (2) major renovation campaigns: (1) a floor-by-floor modernization; and (2) the exterior envelope rehabilitation. Typically, the floor-by-floor modernization entails removal of the entire existing fit-out from the core out and constructing an entirely new space, including new horizontal distribution of the electrical (using existing under-floor raceways) and HVAC systems, and new fan rooms. A sprinkler system and elements of the Main Building's Class E fire alarm system are also introduced as well as new ceilings, lighting, access control systems, communications cabling, etc. Furthermore, modification of an existing riser or installation of a new one is occasionally required to support the renovation program. Any asbestos contaminated materials ("ACM") are abated during demolition.

To date, all floors below the 10th floor setback (E level through 9th floor) and the 12th floor have been completed. With the exception of the 3rd, 9th and 12th floors, all renovated office occupancy floors have a generally uniform appearance.

The exterior envelope rehabilitation campaign includes restoration of the exterior masonry and rehabilitation of the Main Building's roofs.

In addition, there is an ongoing elevator modernization project, which among

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other improvements will introduce a new pantry elevator connecting the 10th, 11th and 14th floors.

The Project will be managed on a day-to-day basis by the Bank’s Real Estate and General Services Function (“REGS”), which will be guided by the 10th Floor RC formed by the end-users. REGS anticipates the RC’s full involvement in the Project’s visioning process. To that end, the successful Offeror will be expected to participate in weekly meetings with the RC for the duration of the Project phases subject to this RFP. Such meetings will be in addition to the weekly team (i.e., the Bank, Architect, and CM) meetings.

1.1.C. Preliminary Project Schedule

The following preliminary schedule is envisioned:

Engineering consultants selection.....	6 to 8 weeks after start of the Schematic Design Phase
Construction Manager Selection.....	July 2006
Approval of Design Development Drawings.....	November 2006
Issuance of Bid Documents.....	February 2007
Guaranteed Maximum Price.....	March 2007
Board of Governors Approval.....	April 2007
Construction Start.....	May 2007

For the purpose of this RFP, the Offerors should assume that the Project phases subject to this RFP will not take more than twenty-four (24) weeks to complete.

1.2 Scope of Services

The Services subject to this RFP shall be consistent with those described in the Standard Form Agreement between Owner and Architect (AIA Document B141, Fifteenth Edition, 1987) as required for the Schematic Design and the Design Development phase, including, but not limited to:

For the Schematic Phase:

- Survey of the existing conditions and analysis of historical data. Detailed

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development of the planning for the work as described in Section 1.1 of this RFP shall include a review of the overall building power and air-conditioning systems with regard to the capacity to install new systems for the modernization of the 10th & 11th floors. Calculations shall be submitted for electrical, HVAC, sprinkler, lighting, etc. for the Bank review;

- Development for the Bank's review and approval of documents defining the overall vision for the renovated floors, including furniture and finishes. These documents shall include plans, sections, elevations, renderings and computer-generated animations;
- Participation in two (2) weekly meetings with the Bank;*
- Preparation of the preliminary cost estimate; and
- Solicitation and evaluation on the basis of the selection criteria mutually agreed upon by the Offeror and the Bank of proposals for sub-consultant services, including, but not limited to: MEP, structural, lighting, acoustical, audio-visual, telecommunications, food service and cost. The Offeror will, subject to the Bank's concurrence, contract with successful bidders. Expenses associated with delivery of those services shall be considered a reimbursable expense; however, the Offeror's services associated with proposal solicitation, evaluation and processing of appropriate documentation shall be part of the basic services.

For the Design Development Phase:

- Based on the approved Schematic Design Documents, develop for the Bank's review and approval of documents illustrating and defining the refinement of the Project. The documents shall establish the scope, relationships, forms and overall appearance of the Project, including furniture for the executive areas, and shall include specifications that identify major materials and establish in general their quality levels;
- Participation in two (2) weekly meetings with the Bank;*and

* One with the Restoration Committee and one with the REGS team

- Adjustment of preliminary construction cost estimate.

The Offerors are advised that upon approval of the Design Development Documents, the Bank will negotiate a fee for the Construction Documents, Bidding and

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Negotiation, Construction Administration and Commissioning Phase services with the successful Offeror.

For the purpose of this proposal, the Offerors should assume that the Project phases subject to this RFP will take no more than twenty-four (24) weeks to complete.

1.3 Mandatory Requirements

To be considered responsive, a proposal must satisfy the mandatory requirements identified in this section and in other respects be responsive to the requirements of this RFP.

The Offeror shall be an Architect licensed to practice in the State of New York. The Offerors engineering consultants shall also be licensed to practice in the State of New York.

1.4 Alternative Proposals

Offerors may submit alternative proposals based on differing specifications if:

- (1) all differences from the specifications in this RFP are clearly defined and the alternative proposal adheres to the format specified by this RFP;
- (2) the Offeror submits a base proposal complying with the specifications of this RFP; and
- (3) the alternative proposal is received at the same time that the base proposal is received. The Bank reserves the right not to accept any alternative proposals submitted.

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Restoration/Renovation of the Main Building's 10th and 11th Floors

2. Administration of the RFP Process

2.1 Schedule of Events

The following schedule of events shall govern this RFP:

<u>Event</u>	<u>Date</u>
Offerors give written notice to the Bank of intent to respond	April 24, 2006
Deadline for receipt of questions	April 25, 2006
Proposals due (1:00 p.m.)	May ³ 2006
Date of selection of Offeror (approximate)	June 16, 2006

The Bank reserves the right, in its sole discretion, to extend the time schedule, as necessary. Offerors will be notified of any change in the schedule.

2.2 Questions about the RFP

It is the Offeror's responsibility to seek clarification of any inconsistencies, ambiguities, errors, or other issues regarding this RFP that the Offeror does not fully understand. The Bank may respond orally to questions that, in the Bank's view, are about insignificant matters that affect only a single Offeror. Responses to questions that may affect Offerors other than the inquirer, however, will be in writing and distributed to all Offerors. Substantive questions about this RFP should be submitted in writing to:

Joseph Oszacki, R.A., Senior Facilities Engineer
 Federal Reserve Bank of New York
 Real Estate and General Services Function
 33 Liberty Street
 New York, NY 10045
 Telephone: (212) 720-5812
 Facsimile: (212) 720-1510
 E-mail: joseph.oszacki@ny.frb.org

Federal Reserve Bank of New York
 Request for Proposals
 Architectural Services
 Restoration/Renovation of the Main Building's 10th and 11th Floors

Federal Reserve Bank of New York Request For Proposal



**Construction Management and Contracting Services
for the Renovation of Multiple Floors
at 33 Liberty Street**



Federal Reserve Bank of New York

Building Services Division

Floor by Floor Modernization

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	2.3 Mandatory Requirements
Section 3	Statement of Required CM Services
	3.1 Pre-Construction Services
	3.2 Construction Services
Section 4	Existing Conditions
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Federal Reserve Bank of New York

Building Services Division

Floor by Floor Modernization

8.3.3 Contract Terms

8.3.4 Subcontracting Plan

Attachment A

Proposal Format

Attachment B

Preliminary Layout/Construction Plans

Attachment C

Block Diagrams Showing Areas of Construction

Attachment D

AIA Contract B141 and Bank Rider

The attachments to this RFP are given for general informational purposes only and may not be completely accurate in all details. The Offeror should make an appointment to view 33 Liberty in order to verify any specific details of the existing building conditions. Preliminary Space Plans for Phase I are attached to describe, in general, the type of construction required, final construction plans may differ from those attached.



Federal Reserve Bank of New York

Building Services Division

Floor by Floor Modernization

Section 1: Introduction

The Federal Reserve Bank of New York, ("the Bank") requests proposals for Construction Management and Construction Service services in connection with the complete and/or partial renovations of eight floors (the "Project") at the Bank's Main Building, located at 33 Liberty Street, New York NY 10045 (the "Building").

This request for proposals ("RFP") is intended as a summary guide to provide an overview and describe in general terms the requirements of the Construction Manager ("CM") for all aspects of the Project. This RFP is not intended to and does not completely detail all of the requirements of the CM. The CM must review the RFP, Preliminary Layout/Construction Plans and the contract (Attachment D) which is incorporated into and made a part of this RFP, to determine all CM contractual responsibilities. The CM shall base the proposal submitted to the Bank on the requirements of the entire RFP. The basis for the agreement between the Bank and the CM is (the Contract") enclosed as Attachment D this Contract includes the following documents: "The Standard Form of Agreement Between the Owner and the Construction Manager, where the Construction Manager is also the Constructor, AIA Document A121/CMc and AGC Document 565, 1991 Edition", as amended by the Bank's Rider specifically for this Project (referrer herein to as, "AIA 121") and the "General Conditions of the Contract for Construction," AIA Document A201, 1987 Edition, as it has been amended by the Bank, (referrer herein to as, "AIA 201")

Each Offeror shall submit with their proposals for furnishing Construction Management Services to the Bank, a letter stating that both the Contract and the RFP Text have been reviewed and that their proposal is based on the requirements of both of these documents. The RFP also lists factors that will be considered in selecting one or more of the Offerors, outlines a required response format and specifies contract clauses required by the Bank. **To be responsive, proposals must include all the information specified in the Proposal Format.**

In general, the Project encompasses the complete renovation of floors 2 and 6; the complete renovation of 50-70% of the 5th and 13th floor, with the remainder requiring partial renovations; the complete renovation of small areas of B, C, D and E levels also with a partial renovation on the remainder.

The area on the 5th Floor undergoing a partial renovation is the Bank's main computer operations center and must remain active 24/7 and during any and all construction activity. Work in this area must be closely monitored. The construction of these eight floors will be completed in Three Phases as described in Section 2.1 below.

The affected floors will be referred to herein individually as a "Floor" and collectively as the "Floors." The Three Phases described in Section 2.1 will be individually referred to as "Phase I, II, or III" or collectively as the "Three Phases." The contract will provide that Phase II and Phase III of the Project will be at the option and sole discretion of the Bank. The words "Architect" and "Engineer," where they are used in both this RFP and in the Contract, shall



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Floor by Floor Modernization

refer to the Project Architect/Engineer, as designated by the Bank, and shall have the same meaning and considered interchangeable.

CM firms that have been invited by the Bank to participate in this RFP are herein referred to as the "Offeror(s)" or "CM". All services provided by and work performed by the CM shall be subject to and comply with all applicable provisions of the Main Building Rules and Regulations.

Section 2: Project Background Information

2.1 Preliminary Project Schedule

Phase	Floor	Space Plans Complete / Start Construction Docs.	Sub. Buyout Demo(Start)	Construction (Start)	Tenant Move-In (Duration)
1	5	09- 30-00	02-01-01	03-01-01	11-15-01/12-15-01
1	2	09-30-00	02-01-01	05-01-01	12-15-01/01-15-02
1	D	09-30-00	02-01-01	04-01-01	01-15-02/02-15-02
2	6	03-31-01	12-15-01	02-01-02	08-15-02/09-30-02
2	13	03-31-01	12-15-01	02-01-02	08-15-02/09-30-02
2	E	03-31-01	12-15-01	02-01-02	08-15-02/09-30-02
3	B	08-31-01	04-01-03	06-01-03	01-15-04/02-01-04
3	C	08-31-01	04-01-03	07-01-03	01-15-04/02-01-04

The Bank reserves the right, in its sole discretion, to extend the time schedule, as necessary.



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2.2 Special Considerations

2.2.1 Furniture Systems

The Bank will independently contract for the purchase and installation of all furniture and carpet. The furniture and carpet installation will **not** be part of the CM's construction contract. These services will be provided directly to the Bank by vendors of the Bank's choosing. All communication cabling and electrical work required for any office furniture, will be part of the CM's contract.

The CM shall coordinate with the Bank, its vendors and the Architect to determine appropriate schedule for this work. The CM shall coordinate this work and make appropriate provisions so that the furniture installation is seamlessly incorporated into the construction and overall Project schedule. The Bank will require a minimum period that the CM must allow, for Bank vendors to complete their work during construction.

2.2.2 Communications Wiring

The CM will subcontract with and incorporate into the CM's scope of work, all communications wiring required for the renovations outlined herein. The Bank will **NOT** contract this work independently from the CM contract.

2.2.3 Asbestos Abatement

The CM will be bid to subcontractors and incorporate any required asbestos abatement into the demolition phase of construction. The Bank will independently enter an agreement with an environmental consulting firm to provide 3rd party air monitoring services during the abatement. This does not substitute for and air monitoring required by the abatement vendor.

2.3 Mandatory Requirements

To be considered responsive, a proposal must satisfy the mandatory requirements identified in this section and in other respects be responsive to the requirements of this RFP.

The Offeror shall be a construction firm conducting business in the New York City area for no less than ten (10) years with demonstrated experience similar projects.



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Section 3: Statement of Required CM Services

The services described herein will be required for each of the Project's Three Phases.

3.1 Pre-Construction

The complete extent of Pre-Construction Services are indicated in the Contract, and include, but is not limited to, those services described below and in Article 2, Sections 2.1 through 2.2.10 of the AIA 121 document.

A general outline of some of the Pre-Construction Services required includes, but is not limited to, the following:

1. The CM must submit a Guaranteed Maximum Price proposal ("GMP") and a detailed Project budget, which shall include both a trade and item by item cost breakdowns, two weeks after signing a contract with the Bank. The CM will be required to update the Project budget and GMP at two-week intervals or as required, incorporating drawing revisions and /or value engineering options during the pre-design phase of work. Each budget submission may be accepted by the Bank as a GMP submission.
2. The CM must submit a detailed Project schedule, including trade and Bank vendor breakdowns two weeks after signing a contract with the Bank. This will be revised by the Contractor until all parties are satisfied that it is a reasonable representation of the work required and meets the Project deadlines of the Bank.
3. Develop pre-purchase packages and, if necessary, pre-purchase these long lead items for assignment to the necessary subcontractors. Including but not limited to items such as HVAC Equipment, Office Fronts, Lighting, etc.;
4. The CM will pre-qualify all subcontractors that will be working on the Project;
5. Have appropriate staff chair and attend weekly project meetings and any other meetings that may be required to meet the contract requirements, within the allotted time frames;
6. During the pre-design of each Phase of the Project, the CM shall conduct site surveys, review existing conditions and become familiar with the Building and its systems. This shall be done to the extent necessary to allow any new construction to be incorporated into the Building's existing systems in accordance with good building practices and in a manner acceptable to the Bank.
7. Perform a detailed review of the construction documents and present, in writing, a constructability review and value engineering options. This shall include but not be limited to: recommendations on reuse of existing building systems or components; cost saving recommendations possible through substitution or design modification; notification of design document errors or omissions and potential staging, phasing or



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other logistical problems associated with the construction.

8. The partial renovation of some areas will require various levels of demolition. The level of demolition to these areas will be determined in part by the recommendations of the CM, the Architect, and the environmental consultant of the Bank.

The Offeror shall include in the proposal to the Bank any costs associated with providing all the Pre-construction Services described in this RFP and Sections 2.1.1 through 2.2 of the AIA 121 portion of the Contract.

3.2 Construction Services

The required Construction Services include, but are not limited to; those services indicated in Article 2, Sections 2.3 through 2.5 of the AIA 121 and throughout the entire AIA 201 document as they have been amended by the Bank. The Offeror shall base its proposal to the Bank on the requirements of the Contract and the RFP Text.

The following is a general description of some of the Construction Services worthy of special mention that is required of the CM:

1. At the start of construction, the CM shall prepare a shop drawing submittal schedule that shall be submitted to the Architect. The CM shall review shop drawings before submission to the Architect. Shop drawings that are in substantial non-conformance with the contract documents will be returned to the CM without being reviewed. The CM shall maintain a shop drawing log and shall update the log prior to the weekly project meeting. This log shall be submitted to the project team one (1) day before the weekly meeting. The CM and the project team shall review the submittal schedule and prioritize those submittals requiring early review.
2. All requests for information (ARFI≅) shall be submitted in writing to the project team. The CM shall maintain a log of RFI=s, update and submit the log one (1) day prior to the weekly meeting.
3. The Bank may elect, at its sole option, to pay the subcontractors via dual party checks. The CM shall follow a specific invoice approval and/or payment process that will be established by the Bank and Architect.
4. The CM will be required to conduct at least one weekly Project meeting and at least one weekly subcontractor meeting. The CM shall prepare minutes of the meeting and distribute meeting notes to all attendees at least one (1) day prior to the next meeting. The CM shall conduct and attend all other meetings that are required for the completion of the Project as determined by the Architect.
5. The Bank will provide space to the CM and his subcontractors to construct, as the CM's expense, temporary offices and shanties. All temporary facilities will be removed by CM before occupancy.



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6. Existing toilet rooms (a limited number) will be made available to the CM for use by the construction trades. Cleaning, maintenance and protection of the rooms are the responsibility of the CM. These rooms will be returned to the Bank in a clean and functioning condition.
7. Upon substantial completion of each Phase of the Project, the CM shall prepare ASystem Turnover Packages to the Bank consisting of shop drawings, operation manuals warranties and guarantees collated by system and then by trade. The CM will be required to provide all as-built documents on reproducible digital format, i.e. CAD format.
8. It is the CM's responsibility to review the contract documents prior to the start of construction for completeness and coordination. The CM should notify the project team of any discrepancies. The CM must include all work reasonably inferred by the contract documents. Minor omissions and uncoordinated, reasonably inferred items will not be reason for change orders or project delays.
9. Change order requests must be submitted in a pre-approved format to the Architect with copies to the Bank. The CM shall include detailed material and labor breakdowns for each trade included in the change order. All change orders shall reflect any impact to the project schedule. The CM shall maintain a change order log that is updated weekly and issued before the project meeting.



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Section 4: Existing Conditions

NOTE: The following describes in general terms the existing conditions of the Floors planned for renovation. However it does not, nor is it intended, to precisely detail specific conditions that exist on each of the Floors.

4.1 Building Information

Floors 2 and 5 are approximately 47,000 gross square feet with approximately 34,000 usable square feet. The 13th floor is 30,000 gross sq. ft. and 20,000 usable sq. ft. The basement levels B, C, D & E are approximately 40,000 gross sq. ft. with much of the area overall space being utilized as storage or mechanical space. (SEE ATTACHMENT A, Existing Floor plans outlining areas of construction)

A typical floor has approximately 70 free standing columns outside the core. Columns are generally on 20' centers. The typical slab to slab height is **13'-4"**. The windows are double hung single pane glass and original to the Building.

All floors have similar core configurations. The core of the Building runs east to west and is located in the center of the Building. The core has sixteen (16) passenger elevators and two (2) freight elevators.

4.2 Miscellaneous Systems

Each floor has two (2) communication equipment and riser closets (Comm. Closets) that are located on the east and west ends on the core. These Comm. Closets will remain active throughout construction, be utilized as the starting point for all the new horizontal communications cabling, and will house the network electronics equipment of the floor.

Each floor has a centrally located security closet that houses the Building's security risers (cameras, alarms and card access systems), it will remain and be utilized as the starting point for all security controls and the horizontal security cabling for the floor renovations. Also located within the core are various electrical distribution closets, utility closets, emergency egress stairwells, etc. Adjacent to the core of the Building is the men and women's bathroom. These bathrooms are to remain.

The interior construction is generally terra cotta/plaster, drywall, metal, and glass partitions. The ceilings are a combination of plaster and drop ceilings, acoustical tiles, and decorative steel plate(in basement vaults). The above ground floors are mostly office space with specialty areas that may include, but are not limited to, small computer and equipment rooms, training rooms, etc. Each floor is monitored by the addressable smoke detection system and fire alarm (Class-E) system of the Bank. Each floor has Fire Stand Pipes and sprinkler risers that provide fire suppression coverage for the general office space.



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4.3 Existing HVAC Systems

The Floors of the Building are generally fed by 1-3, DC driven, airside economizer, HVAC systems. Not all the mechanical rooms are on the floor being served. The 2nd and 13th floors are fed from the 2nd mezzanine level and 15th floor respectively. Each floor has two (2) chilled water risers that provide chilled water via a central chilled water plant. Heating is provided through perimeter steam radiators and fan heating coils. Steam is supplied through a low-pressure central steam distribution, using Con-Edison steam.

The Building's Building Management System (BMS) is a Honeywell system. The BMS server and head end of the Building is located on D-Level. The HVAC controls are a combination of pneumatic and digital. Honeywell controllers are used for both local and remote system controls.

4.4 Existing Electrical Distribution Systems

Each above ground floor (2, 5, 6, & 13) has an electrical system that consists of up to (5) 208-volt risers that feed various distribution panels. The Floors under construction may or may not have existing 480-volt distribution panels or feeds or may have insufficient distribution to support the new floor designs. On basements levels (B, C, D, & E), electrical panels are fed by (3) 208-volt risers.

In addition some floors may have electrical distribution panels that are independently fed from the Bank's Uninterrupted Power System (UPS) and /or the Bank's emergency generation plant.



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Section 5: Scope of Construction

NOTE: The following describes, in general terms, the scope of construction planned for renovation. However it does not, nor is it intended, to detail all the construction requirements.

5.1 Full Office Renovations (Scope of Work), i.e. Complete (“full scope”) Renovation

In general, areas undergoing a full scope renovation will have a complete interior demolition. In general, this includes demolition of existing interior walls, column enclosures, ceilings, lighting, sprinkler systems, fire alarm systems, electrical and communication wiring, ductwork, equipment, etc. It also normally includes varying amounts of asbestos removal, which will be abated during the respective demolition phases of the Project (See Section 2.3.4).

The full scope renovation will include all those items that would generally be included in a newly constructed office space. This will also include: any items required in a “partial” renovation (See Section 5.2), all architectural, mechanical, electrical, structural or other items typically required as part of a complete interior demolition and office renovation. This shall also include but is not be limited to the following: new electrical and mechanical equipment and systems; lighting, lighting controls systems, security devices, and systems, communications cable and associated conduit and tray distribution systems, necessary Class-E and BMS system work, Muzak speaker system and construction of special purpose spaces. These special purpose spaces may include areas such as: pantries, kitchenettes, conference and training rooms with AV systems, libraries, receptions areas and any other specialty areas necessary to meet the operational requirements of the Bank.

5.2 General Scope of Areas undergoing a Limited Scope (“partial”) Renovation

Areas designated for partial renovations will have varying degrees of new construction. The level of demolition to these areas will be determined, in part, by the recommendations of the A/E team, the Bank’s environmental consultant, and the Bank after considering constructability issues and cost. A number of areas undergoing partial renovation require demolition of ceilings and lighting, particularly in basement corridors and in the 5th floor computer room. However, the majority of areas undergoing partial renovation will require the following basic scope of work: painting; electrical and communications branch work; modifications for the installation of new security devices; new and/or upgraded Class-E system devices; a Muzak speaker system; a full floor sprinkler system; new electrical distribution panels; and the renovation of the HVAC systems serving each of these floors.

The renovation of the electrical distribution system of the Bank may include the 208 and 480 volt distribution and panels as well as uninterrupted (“UPS”) and emergency power



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panel and distribution replacement.

The renovation of the HVAC systems will include new space temperature controls, equipment controls and the appropriate integration of any old equipment with the new equipment and or controls. The HVAC renovation will also require that the new equipment be tied into the Bank's existing Honeywell BMS. Most of the existing ductwork and horizontal electrical distribution systems are to remain; however, it may become necessary to modify these somewhat. This may include the installation of variable air volume boxes, in-line fans, or some other system modifications.

(See additional requirements in Sections 4.3- 4.4 and this Section 5)

5.3 Sprinkler Systems Requirements

Both full and partially renovated areas will be fully sprinkled under this Project. Some basement level areas that house the Bank's electro-mechanical infrastructure may require a dry pipe system or other means of coverage fire protection coverage. Other basement level areas, where the ceiling is to remain, i.e. vault areas, will have new sprinklers installed below existing ceilings. See Attachment B for details.

5.4 Fire Alarm and Detection Systems Requirements

Both full and partially renovated areas will have installed new ADA compliant audible and visual alarms/ speaker strobes, smoke detectors and any other fire safety system modifications required to bring each floor up to the code. Each floor, at completion, shall meet all applicable NYC Fire Department, National fire code and NYC Department of Buildings codes and requirements.

5.5 Electrical Systems Requirements

In both full and partial renovation areas, all main and sub-distribution electrical panels, both 208 and 480 volt, UPS and emergency power panels serving the floor will be replaced. The existing power distribution may not support the new requirements of that floor.

In this event, power must be brought from another location or the Bank's main electrical distribution room. In areas where only partial renovations are planned, the existing horizontal electrical distribution to remain will be brought up to meet code and reconnected to the new panels.

Areas marked for full renovations will require a complete new electrical distribution system including any panel or switch board upgrades and/or additions that are required to meeting the Bank's operational requirements. The new Floors electrical distribution includes feeds to the furniture, furniture task lights, general office areas and equipment, lighting, etc. The upgraded electrical distribution system will also include underfloor raceway system modifications.



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5.6 Mechanical HVAC Systems Requirements

In most instances, existing cast iron radiators will remain. Temperature and control valves for these radiators will be replaced, at a minimum, in all areas that are undergoing a complete renovation and in most partially renovated areas.

All existing mechanical rooms serving both the full and partially renovated floors will be completely replaced or refurbished. This includes all new controls, Class-E tie-ins, etc. Areas that are not being fully renovated will have new controls that will be tied to the new and existing mechanical equipment as required for a complete installation. Any existing ductwork to remain will be reconnected to the new equipment. Necessary area controls to partially renovated areas will also be incorporated into the design. A number of areas on each of the Floors may require HVAC sub-systems. These may include supplemental systems for training rooms, conference rooms, small computer rooms, test rooms, pantries, etc. These systems will also be tied to the Building's BMS.

5.7 Restrooms Requirements

The restrooms of each floor will require little to no architectural or plumbing work, except as required for the installation of Class-E speaker-strobes and the installation of sprinklers. However, they will require painting.



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Section 6: Floor Specific Construction

(This section outlines more specifically some of the construction requirement for each of the Floors undergoing construction. The general construction requirements outlined for full scope renovations and partial scope renovations apply as stated in Section 5 of this RFP).

All Areas under construction have occupied offices, computer and equipment areas adjacent to as well as above and below the floors under construction. Disruptions to these ongoing Bank operations during construction is not acceptable.

6.1 Phase 1 Construction

5th Floor Construction: Approximately seventy five percent (75%) of the Floor is to undergo a full scope renovation. The remainder of the Floor is the 5th floor computer room, which will undergo a partial renovation. The scope of work in this, approximate 9000 square foot, area includes: 1) replacement of the drop ceiling, lighting fixtures and (“halon”) fire suppression system, which will be replaced by a pre-action or other dry sprinkler system as determined by the A/E team; 2) the installation of ADA compliant audible and visual fire alarms and smoke detectors; and 3) any necessary tie-in of the existing equipment or services such as ductwork, into the new mechanical or electrical systems.

The 5th floor computer room operates 24 hours a day, 7-days a week and will remain active during the construction. The existing computer room air conditioning consists of a satellite chiller plant that provides chilled water to local Liebert units. This supplemental HVAC system will not be modified under this Project, except as required to meet NYC fire code. This system must remain operational 24 hours a day/ 7 days a week during construction.

NOTE: The 5th floor computer Room is an area that is of great importance to the day-to-day operations of the Bank. Construction in this area cannot disrupt these operations. The Bank required high degree of supervision and protection during any construction in this area.

2nd Floor Construction: Complete full-scope office renovation of the entire floor.

6.1.2 D Level Construction: Complete full-scope office renovation of approximately 4,000-sq. ft. of area. Partial renovation of the remainder of the floor, which includes approximately 5,000-sq.ft. of corridor and storage area that will have ceilings and lighting demolished and replaced. The remainder of D level work includes all items listed in Section 5. It is also important to note that much of D level houses the Building’s electro-mechanical infrastructure, new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project, See Attachment B for details.

6.2 Phase II Construction

6.2.1 13th Floor Construction: The Complete renovation of approximately 19,000 sq.ft. A significant portion of this floor, approximately 11,000-sq. ft., will not be under any type of



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construction and is outside the scope of this Project.

6.2.2 6th Floor Construction: The complete full-scope renovation of the entire floor. This floor has an existing steel and concrete structural slab, which was installed above the building slab to support library files. As part of the CM's basic scope of work, this structure must be removed.

6.2.3 E Level Construction: Includes 38,000 sq. ft. of limited scope renovation with approximately 4,000 sq.ft. of corridor area that will have the ceiling and lighting demolished and replaced. It should be noted that no sprinkle work will be done in the E level Gold vault. A large area of E-level houses the Building's electro-mechanical infrastructure, new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project, See Attachment B for details.

6.3: Phase III Construction

6.3.1 B Level Construction: The complete full-scope office renovation of approximately 3,000-sq. ft. of area. Limited scope renovation of the remainder of the 35,000 sq. ft. area, which includes approximately 4,000-sq. ft. of corridor and storage area that will have ceilings and lighting demolished and replaced. The remainder of B level work includes all items listed in Section 5. It should be noted that the installation of some of the new sprinkler system will be run exposed in the warehouse, utility, and storage spaces. Some of B-level houses the Building's electro-mechanical infrastructure, new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project, See Attachment B for details.

6.3.2 C Level Construction: The complete full scope office renovation of approximately 8,000-sq. ft. of area. Limited scope renovation of the remainder of the 30,000 sq. ft. area which includes approximately 4,000 sq. ft. of corridor and storage area, that will have ceilings and lighting demolished and replaced. The remainder of C level work includes all items listed in Section 5. Some of C-level houses the Building's electro-mechanical infrastructure, new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project, See Attachment B for details.



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Section 7: Administration of the RFP Process

7.1 Schedule of Events

The following schedule of events shall govern this RFP:

<u>Event</u>	<u>Date</u>
Offerors to provide written notice to the Bank of intent to respond	Jan. 22, 2001
Site Visits (by Appointment)	Jan. 22-26, 2001
Deadline for receipt of questions	Jan. 26, 2001
Proposals due (2:00 p.m.)	Jan. 29, 2001

The Bank reserves the right, in its sole discretion, to extend or otherwise modify the time schedule, as the Bank deems necessary. Offerors will be notified of any change in the schedule.

7.2 Alternative Proposals

Offerors may submit alternative to the base proposal on differing requirements if all of the following criteria are met:

- (1) The base proposal meets the requirements of this RFP;
- (2) all differences from the requirements in this RFP are clearly defined and the alternative proposal adheres to the format specified by this RFP;
- (3) the Offeror submits a base proposal complying with the requirements of this RFP; and
- (4) the alternative proposal is received at the same time that the base proposal is received. The Bank reserves the right not to accept any alternative proposals submitted.

7.3 Questions about the RFP

It is the Offeror's responsibility to seek clarification of any inconsistencies, ambiguities, errors, or other issues regarding the RFP that the Offeror does not fully understand. The Bank may respond orally to questions that, in the Bank's view, are about insignificant matters that affect only a single Offeror. Responses to questions that may affect Offerors other than the inquirer, however, will be in writing and distributed to all Offerors. Substantive questions about the RFP should be submitted in writing to:

William J. Lennon, Senior Facilities Engineer



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Federal Reserve Bank of New York
Building Service Department
33 Liberty Street
New York, NY 10045
(212) 720- 6198

Questions should be submitted by the time specified in the Schedule of Events. No other discussion or communication between an Offeror and an employee or officer of the Bank is permitted and no information gained from any such communication may be considered a binding communication of the Bank.

7.4 Intent to Respond

Each Offeror must submit, by the date specified in the Schedule of Events and to the address specified above for submission of questions, a written statement indicating whether the Offeror intends to submit a proposal responding to this RFP. In addition, the Offeror shall submit, as per Paragraph 7.7 of the RFP, financial reports which will be treated as confidential information, and submitted to the address specified in Section 7.4. Audited financial statements are preferred. The Bank, in its sole discretion, may refuse to consider a proposal submitted by an Offeror that did not submit a timely statement of intent and the audited financial report.

7.4 Submission of Proposals

Each Offeror must submit three (3) copies of its proposal sent via certified mail or hand delivered to:

Mr. Richard Prisco
Building Services Officer, Building Services Department
Federal Reserve Bank of New York
33 Liberty Street New York, N.Y. 10045-0001

to be received no later than 2:00 p.m. on the date specified in the Schedule of Events.

Proposals received after the exact time for submission will not be considered for award unless the Bank determines that the late receipt was due solely to mishandling by the Bank after receipt at the Bank. The only acceptable evidence of the time of receipt is the time/date stamp of the Bank on the proposal envelope or other documentary evidence of receipt maintained by the Bank.

Each copy of the proposal must be properly executed and any alterations formally explained and initialed by the Offeror. All three (3) copies must be submitted in a sealed envelope within a sealed envelope. The inner envelope must be clearly labeled "Proposal for Architectural/Engineering Services for the Renovation of Multiple Floors at 33 Liberty Street, DO NOT OPEN." Proposals will not be opened prior to the deadline specified for receipt.



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An Offeror, by submitting a proposal, represents that:

- The Offeror has examined and understands the RFP.
- The proposal is based upon the requirements described in the RFP.
- All terms and conditions set forth in the RFP, including all Appendices, Attachments, Exhibits and Addenda are accepted and incorporated in the proposal unless the proposal explicitly takes exception to them.
- The Offeror possesses the technical capabilities, equipment, financial resources and personnel to provide the Architectural/Engineering Services offered by the Offeror.

Because the Bank may select a proposal or reject all proposals without further discussions with Offerors, Offerors should present their proposals initially in the most favorable possible terms from both a technical and price viewpoint.

7.5 Amendment or Withdrawal of the RFP

Corrections or clarifications to the RFP will be issued in the form of written Addenda to the RFP and will be sent by certified or registered mail to all Offerors who have indicated intent to submit a proposal. Receipt of all Addenda should be acknowledged in the proposal. If an Offeror fails to acknowledge receipt of any Addenda, his proposal will nevertheless be construed as though the Addenda had been received and acknowledged. No interpretation, correction, clarification, or amendments to the RFP made by other than written Addenda will be binding on the Bank.

Offerors may modify or withdraw their proposals up to the deadline for submission but not after that time. Proposals may not be withdrawn for One Hundred Fifty (150) days following the deadline for submission.

7.6 Selection of a Offeror

Upon selection of an Offeror, the Bank will notify all Offerors of the selection. The Bank will indicate in general terms the reason unsuccessful proposals were not accepted.

Selection of an Offeror does not create a contract between the Bank and the selected Offeror(s). The Bank will negotiate a contract with the successful Offeror, which must include the items stated in Attachment D to this RFP. An Offeror to this RFP should specify in its proposal any particular amendments it would propose to the terms stated in **Attachment D**. Merely including a copy of the Offeror's standard contract is unacceptable. If an agreement acceptable to the Bank is not reached within fourteen (14) days of Offeror selection, the Bank reserves the right to disqualify the selected Offeror and reevaluate the remaining proposals.



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The final contract is contingent upon approval by the senior management of this Bank and the concurrence of the Board of Governors of the Federal Reserve System. Absent such approval or concurrence, any award or contract may be canceled without liability on the part of the Bank.

7.7 Determination of Responsibility

The Bank will only select an Offeror that is deemed responsible, in the sole discretion of the Bank. The Bank makes its determination of responsibility based on the following factors, judged as of the time of Offeror selection and the date specified for the start of contract performance:

- a. Ability to comply with all required or proposed performance schedules, taking into consideration all existing business commitments;
- b. Record of satisfactory performance with any entity of the Federal Reserve System or other entities;
- c. Satisfactory record of integrity and business ethics;
- d. Necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- e. Necessary professional personnel, technical equipment and facilities, professional licenses, and operating authority and insurance coverage or the ability to obtain them;
- f. The availability of adequate financial resources to perform the contract; and
- g. Other qualifications necessary for eligibility to receive an award under applicable laws and regulations.

Where, in the sole judgment of the Bank, a substantial portion of the contract is to be performed by a subcontractor, the Bank will make a similar determination about the responsibility of the subcontractor. The Offeror, of course, remains responsible for the performance of the subcontractor.

The proposal must provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent financial statements, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission. The Bank would prefer the financial statements provided by the Offeror to be audited. If un-audited financial statements are provided, the Bank may conclude that the Offeror is not responsible, even if the financial statements appear to show financial strength. The Offeror should also include



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other information that it believes demonstrates that the Offeror is responsible. The burden is upon the Offeror to clearly demonstrate that it is responsible. The Bank reserves the right to require such additional information concerning the Offeror's responsibility as the Bank deems necessary.

7.8 Confidential Information

If the Bank receives a request for information from an Offeror regarding the successful proposal, the Bank may disclose bottom-line amounts of an individual Offeror and other information from a proposal to other Offerors or to members of the public after a proposal has been selected. In deciding on disclosure, the Bank will consider whether the Offeror has requested confidentiality and whether disclosure of the information would likely result in substantial competitive harm to the Offeror. If an Offeror wishes to request confidential treatment of certain information, the request must be in writing and submitted with the proposal or amendment containing the information. The request must discuss in detail the justification for the confidential treatment of each item of information for which confidential treatment is requested. This justification must demonstrate that harm would result from the public release of the commercial or financial information; simply stating that the information would result in competitive harm is not sufficient. The Offeror must also state whether the information is available to the public from another source. Information for which confidential treatment is requested must be:

- a. Specifically identified in the non-confidential portion of the proposal or amendment (by reference to the confidential portion);
- b. Separately bound; and
- c. Labeled CONFIDENTIAL.

7.9 Reservation of Rights

The issuance of this RFP and the Bank's receipt of any information or proposals shall not, in any manner, obligate the Bank to perform any act or otherwise incur any liabilities. The Bank assumes no obligation to reimburse or otherwise compensate any Offeror or recipient of this RFP for losses or expenses incurred in connection with this RFP. The Bank shall have the right to use, for any purpose, any information submitted in connection with this RFP.

The Bank reserves the right: (1) to withdraw the RFP at any time prior to the execution of a contract; (2) to decide not to award a contract to any Offeror; (3) to reject a proposal or award the contract without inviting the Offeror to submit a new proposal; (4) to negotiate with any source considered qualified; (5) to request, orally or in writing, clarification of or additional information concerning proposals that are considered



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competitive; (6) to waive minor informalities or irregularities, or any requirement of the RFP; (7) to accept any proposal in part or in total; (8) to select a proposal other than the low cost proposal; (9) to engage in a Best and Final offer selection process with selected Offerors which it may choose in its sole discretion; and (10) to reject a proposal that does not conform to the specified format or the other requirements of this RFP.

Prior to any award, the Bank may require the Offeror to submit or identify in writing price data bearing on the reasonableness of the offer. The Bank reserves the right to have its authorized representatives inspect the facilities and examine any books, documents, papers, records, or other data of the Offeror or any supplier that pertain to and involve transactions relating to the proposal, for the purpose of evaluating the accuracy, completeness, and currency of data supplied.

7.10 Small and Disadvantaged Small Businesses (a "Covered Company").

The Bank has a policy of encouraging acquisitions from small businesses and socially and economically disadvantaged small businesses. The term "small business" means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and regulations thereunder. The term "socially and economically disadvantaged small business" has the same meaning as defined in Section 8(a) of the Small Business Act (15 U.S.C. § 637(a)). Socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. If an Offeror believes that it is a Covered Company, it should submit the reasons for this conclusion with its proposal.

Under the Bank's policy, the Bank gives preference to a proposal from a Covered Company: a responsive proposal from a responsible Covered Company may be preferred over an otherwise comparable proposal even if the proposal from the Covered Company is marginally more costly. The Bank's contract with the Offeror will also require that the contractor follow the policy of the Bank on Covered Companies in awarding any subcontracts.

7.11 Service Contract Act

Under the Service Contract Act of 1965 (41 U.S.C. § 351 *et seq.* (the "Act")) and the regulations promulgated under the Act (29 C.F.R. Part 4) wages and fringe benefits paid to service employees employed by the Offeror in performing the agreement resulting from this RFP must be not less than the minimum wage and not less than those prevailing in the area where services are performed, or, if a collective bargaining agreement covers the service



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employees, the wages and fringe benefits must be in accordance with the agreement. The Department of Labor determines the level of wages and fringe benefits to be paid to service employees based on the information on Standard Form 98. The selected Offeror will be required to cooperate fully with the Bank by providing any required information and taking any necessary action to obtain a wage determination or otherwise and will be required to comply with the Act, the Regulations, and any wage determination applicable to the agreement.

Section 8: Evaluation of Proposals

8.1 Objective

The objective of the Bank in soliciting and evaluating proposals for this Project is to ensure the selection of the best-qualified Offeror who will provide Construction Management Services for the multi-floor renovation construction, described herein. The result of the process will be the selection of the proposal that, in the view of the Bank, is most advantageous to the Bank and offers the optimum combination of experience, project management approach and price.

8.2 Evaluation Process

Only proposals that are received from Offerors that the Bank has determined to be responsible under Section 7.7 of this document will be considered for award.

All proposals of responsible Offerors will be examined to determine responsiveness to the requirements of the Bank. To be considered responsive, a proposal should satisfy the mandatory requirements and otherwise be responsive to the Bank's other requirements. A proposal that is not responsive may be set aside. If, after evaluation of the remaining proposals, the Bank determines that none of the proposals are responsive, the proposals set aside, at the Bank's option, may be reexamined. Before evaluating the proposals, the Bank may interview one or more Offerors. Prior to evaluating the proposals, the Bank may ask one or more Offerors to arrange an inspection tour of their primary place of business and recently completed projects of similar profile.

The remaining proposals will be further evaluated based on the evaluation criteria in Section 8.3, which are listed in descending order of relative importance.

The Bank has a policy of assisting "Covered Companies" as described in Section 7.10 of this RFP. Under that policy, preference in selecting a proposal may be given to a proposal submitted by a Covered Company. In addition, the subcontracting plan submitted with the proposal will be judged based on plans for using Covered Companies and procedures for documenting compliance with the plan.



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8.3 Evaluation Criteria

Responsive proposals will be evaluated based on the following nonexclusive list of criteria. Criteria categories are listed in descending order of relative importance. Where one of the criteria for determining responsibility is repeated here, in this phase of the evaluation, the criterion will be analyzed in terms of the quality with which or the extent to which the criterion is demonstrated.

8.3.1 Cost

Proposed fees are to be included as set forth in the Proposal Format indicated in Attachment A. Fees shown in a format other than indicated in Attachment A may be considered unresponsive.

The Owner expects that the percentages given for the Construction Manager's General Conditions and Fee be completely inclusive of all compensation required by the Construction Manager. The stated fees will cover all of the Construction Manager's costs associated with completion of the Project and all costs associated with the Construction Manager's performance of services required by the Contract.

The Owner, as per the Contract, may convert the method for compensation to the Construction Manager for Construction Phase services to a Lump Sum Contract based on an amount equal to the agreed upon GMP.

All Offerors are hereby advised that Federal Reserve Bank of New York is exempt from all the local and state taxes.

8.3.2 Resources, Technical Ability, Experience, Staffing and Approach

The ability of the Offeror to furnish a high level of Construction Management Services, taking into account the Offeror's existing business commitments and availability of personnel. Specifically, the Bank seeks Offerors with demonstrated experience in fast track interior renovation projects, which include significant infrastructure upgrades. This includes the ability of the Offeror to staff the Project with in-house professional personnel with strong management, technical and construction skills and experience.

The Offeror shall include a project organizational chart showing names and titles of all team principals and staff assigned to the Project and each team member's responsibility. The Offeror shall include the minimum number of hours that each team member will be assigned to the Project for the Pre-Construction and Construction phases of the Project. The Bank may consider the proposal unresponsive if these minimum hours are excluded.

Include a resume for each team member including project references for projects of a



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similar size and type as described in this RFP.

The Offeror shall provide a brief description of the Offeror's organization and project approach. The Offeror should also provide copies of project documentation including, but not limited to, the following:

- ! Project Budget
- ! Requests for Information
- ! Project Schedule
- ! Shop Drawing Log

(Note: The Bank may require the use of its own standard forms.)

An evaluation of the Offeror's overall approach to the Project. This will include the CM's strategies for quality control, meeting Project milestones, coordination among consulting firms and other contractors, etc., and dealing with any significant considerations identified by the Offeror.

8.3.3 Contract Terms

Whether the contract terms or amendments proposed by the Offeror are significantly less advantageous to the Bank than the terms specified in the RFP. Because proposed contract terms are a part of the evaluation process, the only contract changes which the successful Offeror will be permitted to propose after contract is awarded, are those specifically detailed in the proposal. Acceptance of an Offeror's proposal does not bind the Bank to accept the contract changes proposed **by that Offeror.**

8.3.4 Subcontracting Plan

The existence of a company plan by the Offeror to use Covered Companies in accordance with the Bank's policy. The CM must be able to propose procedures and documentation for compliance with the plan, as described in Section 7.10 of this RFP.



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Attachment A

**Federal Reserve Bank of New York
Request For Proposals
For Construction Management Services
For the Renovation of Multiple Floors
At 33 Liberty Street**

Proposal Format

This attachment specifies the format that should be used to prepare proposals responding to this RFP. The sole purpose of this format is to facilitate the fair and equitable evaluation of all proposals received. At its option, the Bank may consider any significant deviation from this format as non-responsive and disqualify that proposal. Extensive cross-referencing to other documents may be considered non-responsive. Responses should be short and to the point.

The typical format of all proposals should be as follows:

I Costs

Provide your proposed fee as set forth in the following schedule. For purposes of completing schedule, "Subcontract Costs" shall include, but not be limited to, the costs for all labor, equipment and materials to be manufactured, fabricated and/or installed on, in and around the Main Building in order to complete the construction of the Work as required by the Construction Documents and the Contract.

Cost Item 1: Compensation for Pre-construction Services

For the Pre-construction Services, which shall include, but not be limited to, those services set forth in this RFP and the Contract as Pre-Construction Services, the Construction Manager's compensation shall be proposed as a Not-to-Exceed amount billable on an hourly basis and shall not exceed the following:

Phase I: _____

Phase II: _____



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Phase III: _____

Cost Item 2: Compensation for Construction Manager's General Conditions and Construction Work

The Construction Manager's compensation for all costs associated with performance of the Work as described in this RFP, any costs required for the Construction Manager to complete the Work or to complete the construction as required by the Contract or Construction Documents, any costs normally associated with or included in the cost for General Conditions for a General Contractor administered construction project of similar scope shall be the Cost of the Construction Manager's General Conditions.

The Construction Manager's General Conditions shall be for:

Phase I: _____ % of the total Subcontract Costs

Phase II: _____ % of the total Subcontract Costs

Phase III: _____ % of the total Subcontract Costs

Cost Item 3: Compensation for Construction Manager's Fee

Compensation for the Construction Manager's Fee shall be:

Phase I: _____ % of the total Subcontract Costs

Phase II: _____ % of the total Subcontract Costs

Phase III: _____ % of the total Subcontract Costs

Cost Item 4: Construction Manager's Contingency

The Guaranteed Maximum Price Contingency shall not exceed the following percentages of the total subcontract costs based on when the GMP was established:

<u>Point at which GMP is established</u>	<u>Maximum Contingency</u>
Prior to 100% construction documents	_____ % percent
100 % Construction Documents but prior to execution of all major Subcontracts	_____ % percent



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After execution of all major Subcontracts _____ % percent

II Resources, Technical Ability, Project Team Experience, Staffing and Approach

- a. Provide a brief narrative outlining your firm's history; describe representative projects completed by your firm in the past year and any unique qualifications that might pertain to this Project.
- b. Indicate the quality control mechanisms your firm expects to utilize during construction.
- c. Provide a brief resume of all staff members who will be assigned to the Project.
- d. For each of the key staff members that will be most intimately involved with the Project, the Offeror shall provide a description of two (2) completed projects that each staff member has been intimately involved with and one reference from each of the projects listed for each staff member: Do **NOT** provide a list that includes principals or senior executives of the firm unless those individuals will be involved with the project on a day to day basis. List **only** those individuals that will be most directly involved with this Project. Do **NOT** include pictures or descriptions of projects that the firm has completed or been associated with, unless they are projects that have been worked on by the staff members assigned to the project and are accompanied a reference for that staff member.

Description of Proposed Project Staffing

- a. Provide a staffing chart for each of the three Phases of the Project. The chart should be in format similar to the example below, or in some other format that clearly defines the project staffing commitment and the responsibilities of each staff member. Indicate the weekly staffing (minimum) hours that the staff member would be dedicated to the Project. Detail each staff member's responsibility or explain assigned task, i.e. (2nd Floor Superintendent, 5th Floor Superintendent, Asst. PM 5th Floor Computer Room, MER coordinator for entire project etc.)

Note: The staffing chart is to show minimum hours that each staff member would be committed to project. Do not propose staffing on an "AS REQUIRED" basis, as this is a minimum requirement. The Contract requires, and the Bank expects, that the selected Offeror will provide whatever staffing is necessary to meet the schedule and provide a quality product that meets all contractual, design and construction related requirements.

- b. The Offeror shall list the hourly rates for the personnel scheduled to participate in the



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Project and shall include all Direct Expenses, Overhead and Profit.



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Sample Staffing Chart

	Minimum Hours per week of Staff Dedicated to Each Task (Insert staffing proposed and responsibility or area of construction assigned that staff member)					
STAFF MEMBER	PM	MEP Coordinato r	Asst. PM	Staff...	Super- intenden t	Estimato r
ASSIGNMENT	Overall Project	Overall Project	Assigned to...	Assigned to...	Night Super	Overall Project
Phase I- Pre-design Services	15hrs	15hrs	...hrs	...hrs		
Phase I- Construction	Full Time	Full time	...hrs	...hrs		
Phase II- Pre-design Services						
Phase II- Construction						
Phase III- Pre-design Services						
Phase III- Construction						

a.

III. Contract Terms

The Offeror should specify any contract terms proposed by the Offeror that differ from any terms specified in this RFP. If the Offeror includes a copy of its standard contract the Offeror should specify which of those terms differ from the terms indicated in the RFP.

Because proposed contract terms are a part of the evaluation process, the only contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal. Acceptance of an Offeror's proposal does not bind the Bank to accept the contract changes proposed by that Offeror.

IV. Subcontracting Plan

The existence of a company plan by the Offeror to use Covered Companies in accordance with the Bank's policy. The CM must be able to produce procedures and documentation for



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compliance with the plan, as described in Section 7.10 of this RFP.

V. Financial Background and Responsibility

The Offeror should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent financial statement, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission.

The Offeror should also include information to demonstrate that the Offeror is "responsible" as described in Section 7.7 of the RFP. This should include examples of similar projects successfully completed, especially for this Bank or other Reserve Banks.

The Offeror should include similar information about any subcontractor that will perform a substantial part of the contract.

VI. Miscellaneous

The Offeror should include any additional information the Offeror deems useful to the Bank in evaluating its proposal. The Offeror may also request confidential treatment of information in the proposal in accordance with Section 7.8 of the RFP. If the Offeror qualifies as a Covered Company as described in Section 7.10 of the RFP, the Offeror should indicate in this Section and describe the basis for its determination.

The Offeror should include its plan for using Covered Companies as subcontractors as discussed in Section 7.10 of the RFP and any procedures the Offeror will use to document compliance with the plan.

VII. Execution

The proposal should be signed by an authorized representative of the Offeror and include evidence of the authority of the representative.

**FEDERAL RESERVE BANK OF NEW YORK
CONTRACT RIDER**

The Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, AIA Document A121/CMc and Document 565, 1991 Edition, dated _____ between _____ (the AConstruction Manager” or ACM≡) and the Federal Reserve Bank of New York (“Owner” or “Bank”) is amended by this Rider as follows (as amended the “Agreement” or AAIA A121”). The entire contract between the parties shall consist of the Agreement, the AIA Document A201 Fourteenth Edition, 1987 as it may be amended by the Supplementary Conditions generated by the Bank for this Project (as amended, AAIA A201”), any Addendums, and the Contract Documents (as such term is defined in Subparagraph 1.01 below) (together, the “Contract”). In the event of any inconsistency between the terms of the AIA Document A121/CMc and Document 565, 1991 Edition and this Rider, the terms of this Rider shall govern. To the extent that any provisions of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of the Project and owner as determined by Owner shall prevail.

ARTICLE 1; GENERAL PROVISIONS

Add the following new Paragraph 1.0:

1.0 DEFINITIONS

Terms used throughout this Contract shall have their meaning set forth in Exhibit A (the Supplementary Conditions to AIA A201) unless otherwise defined herein or a different definition is clearly intended from the context. To the extent that the terms of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of the Project and the Owner shall prevail.

Add the following Subparagraphs:

1.0.1 Contract Documents The “Contract Documents” means the Contract, together with all Modifications thereto, the Construction Documents and Specifications and the Exhibits to this Contract listed in Subparagraph 1.0.1, which are attached or deemed to be incorporated in this Contract as they are developed. The Contract Documents constitute the entire agreement between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents do not include any bidding documents, such as, any advertisements or invitations to bid, any instructions to bidders, any requests for proposals, any sample forms, any contractor or subcontractor bids or portions or addenda relating to these or any other documents, unless otherwise specifically enumerated in this Contract. For the Construction Phase of each of Phases I, II, and III (as defined below) of the Project, the General Conditions of the Contract shall be AIA Document A201, Fourteenth Edition, 1987, as amended for this project by the Bank=s Supplementary Conditions, which is hereinafter referred to in its modified form as AAIA A201” or AExhibit A≡ and includes but is not limited to, the portions of this AIA A121 that pertains to the Construction Phase of the

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

work and the AGeneral Conditions of the Contract for Construction≡,

- Exhibit A AAIA A201”, 1987 Edition and Supplementary Conditions thereto.
- Exhibit B Schedule of Critical Dates;
- Exhibit C Drawings and Specifications;
- Exhibit D Construction Manager Staffing Requirements
- Exhibit E Section 531 of Title 12 of the U.S. Code re: Tax Exempt Status of Owner.
- Exhibit F Building Rules and regulations
- Exhibit G Scope of Construction and Description of Phases I, II & III

1.0.2 Architect The AArchitect≡ shall have the meaning that is defined in Article 4 of the AIA A201.

1.0.3 Work The AWork≡ shall have the meaning that is defined in Article 1.1.3 of the AIA A201 and shall include in general, but is not limited to, the following: any construction and services required by the Contract Documents as well as any services necessary for the complete demolition, abatement, and modernization or partial renovation of 8 Floors at the Owner’s Main Building located at 33 Liberty Street (“Main Building”). The Work shall be completed in three (3) phases, Phases I, II and III respectively, which are described in more detail in Section 1.0.4 and Exhibit G of this Contract. Each of these phases will require the CM to provide all the requirements of the Contract for each individual Phase of construction. **Each of Phases I, II and III will be constructed and treated as independent projects in which the Owner, at its sole option and discretion, may decide to extend this Contract for a subsequent Phase or to terminate the Contract after the then current Phase of construction is complete. Each of Phases I, II and III will require its own Guaranteed Maximum Price (“GMP”) and each will require the CM to complete all tasks required as part of this Contract as if it was an individual project, unless the Owner waives, in writing, a specific task due to unnecessary redundancy.** The Work shall include all supervisory personnel; labor; materials; tools; supplies; equipment; additional services; scaffolding; transportation; licenses; etc., as well as any other methods of construction necessary for the Project completion required of the Construction Manager by the Contract Documents, even items or services which are not specifically stated in the Contract Documents but which are generally required under standard construction practices for this type of office environment or which can be reasonably inferred for a construction project of this nature; such items shall be assumed to be included in the scope of the Work. The Work shall also encompass any task or service that is required for the Construction Manager to turn over to the Owner a complete and quality finished construction project including all required permit signoffs and inspections required under any applicable law, regulation or building code. The Work does not include Pre-Construction Services performed by the Construction Manager.

1.0.4 Project The AProject≡ shall mean the overall undertaking in which the Architect, Owner, Construction Manager and others will participate to complete the necessary building

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

modifications and construction required to completely or partially renovate eight (8) floors of the Main Building in three (3) separate phases as described herein, in general, and as more fully described in Exhibit G of this Contract. Phase I includes all construction required to renovate floors 2, 5 and D Level; Phase II includes construction required to renovate floors 6, 13 and E Level; and Phase III includes construction required for B and C Level. **Each Phase of the overall Project will have its own distinct pre-construction phase, construction phase, and post-construction phase. Any references in this Contract to pre-construction, construction or post-construction services shall be understood to apply equally to each Phase of the Project.** Each Phase of the Project shall include all services required under the Contract including the performance and completion of the Work, as well as the services required by the Architect and any other consultants or contractors the Owner may engage to assist in the completion of the Work and any tasks associated with the Project. All Areas under construction have occupied offices, computer and equipment areas adjacent to as well as above and below the floors under construction. Disruptions to these ongoing Bank operations during construction is not acceptable. Additional requirements for each Phase include, but are not limited to, the following:

Phase I construction of the Project shall include the following:

5th Floor Construction: Approximately seventy five percent (75%) of the Floor is to undergo a full scope renovation. The remainder of the Floor is the 5th floor computer room, which will undergo a partial renovation. The scope of work in this, approximate 9000 square foot, area includes: 1) replacement of the drop ceiling, lighting fixtures and (“halon”) fire suppression system, which will be replaced by a pre-action or other dry sprinkler system as determined by the A/E team; 2) the installation of ADA compliant audible and visual fire alarms and smoke detectors; and 3) any necessary tie-in of the existing equipment or services such as ductwork, into the new mechanical or electrical systems.

The 5th floor computer room operates 24 hours a day/ 7 days a week and will remain active during the construction. The existing computer room air conditioning consists of a satellite chiller plant that provides chilled water to local Liebert units. This supplemental HVAC system will not be modified under this Project, except as required to meet NYC fire code. This system must remain operational 24 hours a day/ 7 days a week during construction.

NOTE: The 5th floor computer room is an area that is of great importance to the day-to-day operations of the Owner. Construction in this area cannot disrupt these operations. The Owner requires a high degree of supervision and protection during any construction in this area.

2nd Floor Construction: Complete full-scope office renovation of the entire floor.

D Level Construction: Complete full-scope office renovation of approximately 4,000-sq. ft. of area. Partial renovation of the remainder of the floor, which includes approximately 5,000-sq.ft. of corridor and storage area that will have ceilings and lighting demolished and replaced. Much of D Level houses the Main Building's electro-mechanical infrastructure and new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project.

Phase II construction of the Project, **if the Owner decides to proceed as specified in Paragraph 1.1.3 above**, shall include the following:

13th Floor Construction: The Complete renovation of approximately 19,000 sq.ft. A significant portion of this floor, approximately 11,000-sq. ft., will not be under any type of construction and is outside the scope of this Project.

6th Floor Construction: The complete full-scope renovation of the entire floor. This floor has an existing steel and concrete structural slab, which was installed above the building slab to support library files. As part of the CM's basic scope of work, this structure must be removed.

E Level Construction: Includes 38,000 sq. ft. of limited scope renovation with approximately 4,000 sq.ft. of corridor area that will have the ceiling and lighting demolished and replaced. It should be noted that no sprinkle work will be done in the E Level Gold vault. A large area of E Level houses the Main Building's electro-mechanical infrastructure, new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project.

Phase III construction of the Project, **if the Owner decides to proceed as specified in Paragraph 1.1.3 above**, shall include the following:

B Level Construction: The complete full-scope office renovation of approximately 3,000-sq. ft. of area. Limited scope renovation of the remainder of the 35,000 sq. ft. area, which includes approximately 4,000-sq. ft. of corridor and storage area that will have ceilings and lighting demolished and replaced. The installation of some of the new sprinkler system will be run exposed in the warehouse, utility, and storage spaces. Some of B Level houses the Main Building's electro-mechanical infrastructure, new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project.

C Level Construction: The complete full scope office renovation of approximately 8,000-sq. ft. of area. Limited scope renovation of the remainder of the 30,000 sq. ft. area which includes approximately 4,000 sq. ft. of corridor and storage area, that will have ceilings and lighting

Construction Manager: _____ Bank:

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demolished and replaced. Some of C-level houses the Building’s electro-mechanical infrastructure and new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project.

1.1 RELATIONSHIP OF PARTIES

Delete the word Areasonable≅ after the word AManager=s≅ in line 4 and replace it with the word Abest≅.

Insert after the second sentence the following:

ASuch services shall consist of all construction management and general contracting services and work required for a project of this size and complexity, and the services shall be performed to the highest professional standards followed by construction management and general contracting firms generally recognized as leaders in the construction industry.”

1.2 GENERAL CONDITIONS

Insert after the word “Construction” in line 3, the following: “as it may be amended for this Project.”

Insert after the word “Agreement≅ in line 8, the following: “as it may be amended for this Project.”

Insert at the end of Paragraph 1.2 the following:

AWherever the AIA Document A121/CMc and Document 565, 1991 Edition, as it may be amended for this Project, or any portion of the Agreement make reference to AIA Document A201, it shall mean the AGeneral Conditions of the Contract for Construction,≅ AIA Document A201 Fourteenth Edition, 1987, as it may be amended for this Project by the Supplementary Conditions generated by the Federal Reserve Bank of New York (AAIA A201” or AExhibit A≅).

ARTICLE 2; CONSTRUCTION MANAGER’S RESPONSIBILITIES

Delete the third sentence of the first paragraph and replace it with the following:

AThe pre-construction phase for each Phase of the Project may also include any Minor Work (see Subparagraph 2.3.1.1) that may be required prior to the start of the construction phase. The Owner may, in its sole discretion, establish the pace and degree of overlapping, if any, of the pre-construction phase, the construction phase, and the post-construction phase for each Phase of the Project, and may require time intervals between the phases which shall not be considered a delay of the Project by the Owner. The Construction Manager will begin to render such services on the date specified in a written notice from Owner for each phase. All of the services described in this Article 2 shall collectively constitute the AConstruction Manager=s Services.≅ The Construction Manager shall provide the Construction Manager’s Services expeditiously, with due diligence, in accordance with the time periods set forth in

Construction Manager: _____ Bank:

Date: _____ Date:

Exhibit B of this Contract and as agreed to with the Owner at the time this Contract is executed.≡

2.1.1 PRELIMINARY EVALUATION

Delete Subparagraph 2.1.1 in its entirety and replace with the following:

A Within fifteen (15) working days of the date of this Contract, the Construction Manager shall provide a complete evaluation of the Owner=s program and provide a detailed cost estimate, in terms of one another, based on all the information available to that date. When this initial estimate has been reviewed by the Bank, a Project budget shall be established, as per Section 3.1.3. Throughout the duration of the Project the Construction Manager shall advise the Owner and Architect promptly if it appears that the project budget will not be met, provide estimates of overage and make recommendations for corrective action. Nothing in this Agreement shall be deemed to require, or authorize, or permit Construction Manager to perform any act which would constitute design services, or the practice of architecture, professional engineering, certified public accounting, or law. Recommendations, advice, budgetary information, and schedules to be furnished by Construction Manager under this Agreement shall not be deemed to be representations, warranties, guarantees (with the exception of the GMP), or constitute the performance of such licensed professional services.”

2.1.2 CONSULTATION

Insert the following after the second sentence:

“This consultation should include details with respect to all systems relevant to the Project, including, without limitation, structural, plumbing, security and communications, fire protection and the life safety plans, heating, cooling, ventilation, and electrical.

Add the following new Subparagraphs:

2.1.2.1 LOGISTICS

The Construction Manager shall become familiar with the operating procedures of the Owner and any conditions, rules and regulations which Building Management, any other agency, physical restriction or any activity or part thereof on or about the Main Building that may impose restrictions on the Construction Manager or the Bank with respect to the cost or timely completion of the Project or the Work. The Construction Manager shall meet with the Bank and the Architect as required to discuss and address these issues to the mutual satisfaction of the Bank. The Construction Manager shall prepare a written report which identifies these and any other logistical, legal or procedural issues that may impact the cost or time of completion of the Work and the Project. The Construction Manager shall generate a

Construction Manager: _____ Bank:

Date: _____ Date:

constructability review for the Project in terms of these issues. The Construction Manager's review shall include in a detailed fashion, but not be limited to, topics such as deliveries and vertical hoisting of materials and equipment for both the Owner and Construction Manager, street access limitations and other logistical concerns, etc. The Construction Manager shall compare and contrast various options of the cost and schedule implications of each of these on the overall Project.

2.1.2.2 VALUE ENGINEERING

The Construction Manager shall review the ADesign Development Documents and the "Construction Documents" for each Phase of the Project as they are being prepared by the Architect, and make recommendations to the Owner and Architect with respect to the items listed below. The Construction Manager will meet with the Owner and Architect at a minimum of bi-weekly intervals, to discuss and present recommendations on the documentation and marked-up drawing(s) with respect to the following value engineering issues:

- (a) the construction feasibility with regard to all aspects of the Work;
- (b) the availability of labor, materials and supplies and actions designed to minimize adverse effects of labor or material shortages;
- (c) design options, installation, detailing and construction alternates and how these relate to construction costs including estimates of material and design options, preliminary budgets and possible construction economies consistent with the Owner's requirements and sound construction practices; and
- (d) omissions, discrepancies and deficiencies, in the Construction Documents, or between the Construction Documents and existing conditions at the Main Building with respect to the installation and construction completion.

2.1.2.3 ERRORS, OMISSIONS & TRADE CONSIDERATIONS

The Construction Manager shall review the ADesign Development Documents and the "Construction Documents" for each Phase of the Project as they are being prepared by the Architect, and make recommendations to the Owner and Architect with respect to the items listed below. The Construction Manager will meet with the Owner and Architect at a minimum of bi-weekly intervals, to discuss recommendations and present documentation prepared by the Construction Manager with respect to the following:

- (a) conduct of construction operations under good construction practices; and any variations from customary construction, practices and methods which, in the Construction Manager's opinion, may cause difficulties or occasional delays in the performance of the Work; and

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

- (b) elimination of possible conflicts and/or overlapping jurisdictions among the various trades or overlapping responsibilities among Subcontractors.

2.1.2.4 LABOR AND MATERIAL SURVEY

The Construction Manager, within thirty (30) working days of the signing of this Contract, shall make a labor and material survey, including an analysis of the costs, types and quality of labor required for the Work and a forecast of the availability thereof as and when needed, including a survey and schedule of the dates of all union labor contracts coming up for renewal during the projected period of construction. Such survey shall also include the Construction Manager’s recommendations regarding, and his plan for rendering assistance necessary for, the development and administration of an effective labor relations program for the Work and the avoidance of labor disputes during the performance of the Work. The Construction Manager shall review the ADesign Development Documents” and the “Construction Documents” as they are being prepared by the Architect, and make recommendations on unit prices and alternates for each component of the construction. The Construction Manager shall incorporate these into bid packages as required by the Owner.

2.1.2.5 COMMUNICATION REQUIREMENTS

The Construction Manager shall maintain written records of all communications with, and recommendations made to the Architect and response thereto, make the same available for inspection by the Owner at all times and promptly furnish to the Owner copies of all correspondence between the Construction Manager and Architect relative to the Project. The Construction Manager agrees to perform other services and attend such meetings during the Pre-Construction Phase as the Owner may request in order to assist in the preparation of the Construction Documents, cost estimates, updated Project Schedules and any other documents and instruments relative to the Work and the Project. The Construction Manager shall prepare and promptly distribute minutes of all such meetings to all attendees, the Owner, Architect and such other parties as may reasonably be designated by the Owner to receive such minutes.

2.1.3 PRELIMINARY PROJECT SCHEDULE

Delete the first sentence in its entirety replace with the following:

AThe Construction Manager shall develop and submit within fourteen (14) days of the signing of this Contract or at the time the Architect receives signed off Space Plans from the Owner and begins developing construction documents for Phases II and III, and at bi-weekly intervals thereafter, for review and approval by the Owner and Architect, a “Preliminary Project Schedule” that shall include all aspects of the Project to the extent information concerning each Phase of the Project has been developed. This Schedule shall include all tasks required for the performance of the Work and any aspects of the Project outside the

Construction Manager: _____ Bank:

Date: _____ Date:

Construction Manager=s scope of work. This schedule shall be fully coordinated and integrated with the timing requirements as set forth by the Owner in this Contract. The Preliminary Project Schedule shall include in a detailed fashion, but not be limited to, a “Phase Schedule” for each Phase of the Project, which includes:

- (a) a time schedule which identifies all major, minor and critical and non-critical components of the Work and that Phase, including all milestone and interim dates for pre-purchasing materials (including long lead time items) from abroad or within this country;
- (b) the dates for commencement, Date of Substantial Completion and Date of Final Completion of that Phase;
- (c) the dates for getting and reviewing bids and/or negotiated proposals and awarding Subcontracts;
- (d) the dates for all preliminary and final inspections;
- (e) dates for shutdowns and tie-ins of building systems; and
- (f) dates for the start-up and testing of each portion of that Phase.

The Construction Manager must obtain the Owner=s and Architect=s approval for any portion of the Preliminary Project Schedule relating to activities required by the Owner or services performed by the Owner=s own forces, or contractors and consultants hired by the Owner.≡

Insert new subparagraph 2.1.3.1.

2.1.3.1 PROJECT SCHEDULE APPROVAL

The Owner will notify the Construction Manager in writing when each Preliminary Phase Schedule has been accepted and approved by the Owner as the APhase Schedule.≡ This approval will be at the sole discretion of the Owner, and will take affect at the time the notification is sent to the Construction Manager. The Owner may approve each Preliminary Phase Schedule as the Phase Schedule at that time or at any time one of the following milestones is reached: eight (8) weeks after the date of this Contract; at the time the Owner requests the Construction Manager to provide a Guaranteed Maximum Price for each Phase; or at the time the Construction Manager is required to submit a Guaranteed Maximum Price to the Owner for each Phase. The Construction Manager agrees that each Phase Schedule shall not be amended, modified or extended without the Owner’s prior written approval and shall meet the critical dates as stated in Attachment B.

Construction Manager: _____ Bank:

Date: _____ Date:

2.1.5 PRELIMINARY COST ESTIMATES

Rename this Section, **“COST ESTIMATES”**

Subparagraph 2.1.5.1: Delete in its entirety and replace with the following:

AThe Construction Manager shall prepare and submit, for review and approval by the Owner and Architect, a detailed estimate of the cost of each Phase, including supporting data. The finished and detailed estimate for Phase I shall be submitted to the Owner within fourteen (14) days of the signing of this Contract or at the time the Architect receives signed off Space Plans from the Owner and begins developing construction documents for Phases II and III. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate weekly or as required by the Owner and Architect. The Construction Manager shall also submit finished, detailed and complete estimates to the Owner for each Phase when the Design Development Documents and Construction Documents are 60% and 100% completed. The Construction Manager shall advise the Owner and Architect promptly if it appears that any estimate will exceed any previously approved cost estimate or the Project Budget and shall promptly provide a detailed estimate of overages and make appropriate recommendation(s) for corrective action that will enable adherence to the Project Budget.≡

Delete Subparagraphs 2.1.5.2, 2.1.5.3, and 2.1.5.4 in their entirety.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

Delete in its entirety and replace with the following:

AUnless otherwise directed by the Owner, the Construction Manager shall enter into Subcontracts with vendors who are to furnish materials and equipment, persons or entities performing Work or other work necessary for the completion of each Phase of the Project. Owner shall direct the Construction Manager whether to enter into Subcontracts in the Pre-Construction Phase or the Construction Phase. Materials and equipment shall be purchased in a manner that assures use of the Owner’s tax exemption (see Section 11.14). The Construction Manager shall solicit and enter into Subcontracts as follows:

- .1 Within fourteen (14) days of the signing of this Contract or at the time the Architect receives signed off Space Plans from the Owner and begins developing construction documents for Phases II and III, the Construction Manager shall propose pre-qualification criteria for all Subcontractors and shall propose specific pre-qualification criteria for any specialty subcontractors that may be required. The Construction Manager shall include in the pre-qualification criteria any special Owner requirements. The

Construction Manager: _____ Bank:

Date: _____ Date:

Construction Manager shall meet with the Owner and Architect to finalize the pre-qualification criteria and shall prepare and submit to the Owner and Architect for their approval the pre-qualification criteria for each Subcontractor. The Owner shall have sole discretion as to the pre-qualification criteria used to determine the qualified bidders list for each trade.

- .2 The Construction Manager shall develop prospective interest in the Project among potential Subcontractors.
- .3 The Construction Manager, based on the Owner and Architect approved pre-qualification criteria, shall identify potential service providers within each of those trades necessary for the Work, perform evaluations of their financial strength, current work loads, areas of qualification, capability of their staff, strength of their home office support, quality of work on similar projects, management and financial control systems, and references. The Construction Manager shall furnish these evaluations to the Owner and the Architect for review and submit a qualified bidders list by trade or type of construction activity for the Architect=s and Owner=s approval. An Owner-approved bidders' list shall be accepted and agreed to by the Construction Manager, Owner and Architect prior to the submission of a proposed Guaranteed Maximum Price by the Construction Manager.
- .4 The Construction Manager shall advise the Owner and Architect as to the appropriate limits of the scope of work for the trades to be used in the Project, based on careful research of qualified Subcontractors.
- .5 The Construction Manager shall prepare bid packages using the Design Documents, Construction Documents, Technical Specifications and any overall pertinent information prepared by the Architect, Owner, Owner=s vendors and/or consultants and prepare separate bid packages for the Subcontracts, including providing written descriptions of the scope of work for a particular trade, model contracts, bidding instructions, and requests for unit prices, bonding and insurance requirements, reference requirements, and response dates. These bid packages shall be reviewed and approved by the Owner.
- .6 The Construction Manager shall distribute the bid packages to the Owner-approved bidders= and solicit lump sum bids, including man-hour estimates, alternates to the Work, unit pricing, and labor and material rates for the scope of work within each bid.
- .7 The Owner, at its sole discretion, shall have the option to require the Construction Manager to adhere to the Owner=s procurement guidelines. At

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

a minimum, the Construction Manager shall adhere to the following subcontractor bidding procedures: (i) bidding will be by sealed bid sent from the subcontractor to the Owner; (ii) bids will be opened by the Owner in the presence of the Construction Manager and Architect; and (iii) bids will be submitted to the Architect for review. If requested by the Owner, the Construction Manager shall clarify or shall obtain clarifications of unclear or missing information, and obtain corrected bids as necessary.

- .8 The Construction Manager shall certify and submit in writing to the Owner and Architect that all bids are on a common basis as to information contained in the bid packages, are in the proper format, are consistent with the requirements of the Construction Documents, provide a reasonable expectation for a fair profit for the bidder and include all relevant elements of the Contract.
- .9 The Construction Manager shall tabulate all the certified bids according to the scope of work, compare the bids to the Project budget, and shall submit to the Owner a recommendation for award with a statement of reasons for the recommendation and the bid tabulations. The selection of the successful bidder(s) will be the responsibility of the Construction Manager, however the Owner will have the option to require the Construction Manager to select another bidder as the successful bidder. If the Owner requires the Construction Manager to select a bid other than the low bid and the Guaranteed Maximum Price has previously been established, an adjustment of the Guaranteed Maximum Price will be made for the difference between the cost of the successful bid and the low bidder, and adjustment of contract time or schedule need not be considered by the Owner.
- .10 After the successful bidders have been selected, the Construction Manager shall negotiate with the selected Subcontractors on the terms and conditions under which each will contract with the Construction Manager (“Subcontracts”). The Owner reserves the right to require that the Subcontracts comply with the Owner’s procurement guidelines. During pre-award meetings, the Construction Manager shall ensure that each Subcontractor has a thorough understanding of the scope of work and advise him of the manning and progress reporting information requirements and general site safety, housekeeping and other requirements for the Project.
- .11 The Construction Manager shall issue notices to proceed as appropriate and as required in the Project Schedule.≡

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

2.1.7 LONG-LEAD TIME ITEMS

Delete this section in its entirety and replace with the following:

The Construction Manager shall review the “Design Development Documents” and the “Construction Documents” as they are being prepared by the Architect and shall identify all materials or equipment that may require a lead time for delivery of over six (6) weeks from the time of order (Long-Lead Time Items). The Construction Manager shall recommend the most effective way of acquiring these items. The Construction Manager shall determine and submit to the Owner a report outlining the cost and schedule implications associated with long-lead time procurement of Long-Lead Time Items. If required by the Owner, the Construction Manager shall develop long-lead time procurement packages including budget, schedule, bid, award and engineering. The Construction Manager shall also be responsible for the deliveries of any Long-Lead Time Items purchases. These early purchase packages shall be executed, based on the sole discretion of the Owner.

2.1.8 EXTENT OF RESPONSIBILITY

Delete this section in its entirety.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Rename this Section, “EQUAL EMPLOYMENT OPPORTUNITY”

Delete in its entirety and replace with the following:

In performance of this Contract, the Construction Manager agrees that with respect to the Project the Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

Replace the title of Subparagraph 2.2 with the following, “GUARANTEED MAXIMUM PRICE PROPOSAL, CONTRACT TIME AND OPTIONS TO CONTRACT METHODOLOGY”

Delete Subparagraph 2.2.1 in its entirety and replace with the following:

Within fourteen (14) days of a request by the Owner, which shall be no earlier than delivery to the Construction Manager of Construction Documents for each Phase of the Project that are at least seventy-five percent (75%) complete and show 100% design intent as determined by the Architect, the Construction Manager agrees to propose a Guaranteed Maximum Price.

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

The Owner may request the Construction Manager to revise the Guaranteed Maximum Price for each Phase of the Work based on revisions to the Contract Documents, as often as deemed necessary at bi-weekly intervals. The Construction Manager shall certify in writing to the Owner that the Guaranteed Maximum Price is the amount for which the Construction Manager will guarantee the performance and completion of the Work for each Phase of the Project and all required Construction Manager Services, inclusive of, but not limited to, all of the Cost of the Work, the Construction Manager=s Fee, Construction Manager=s General Conditions and Construction Manager=s Contingency. Owner shall provide Construction Manager with 100% complete and coordinated drawings (and specifications) within 45 days after issuance of the request for a GMP.”

2.2.2 Insert after the word Aas= in line 8, the word: Asignificant=.

Insert at the end of Paragraph 2.2.3 the following:

AThe Construction Manager’s Contingency shall not exceed the percentage of the total value of the Cost of the Work as set forth in Article 5, based on when the Guaranteed Maximum Price was established.=

Add the following new Subparagraph A2.2.3.1 Establishment of Guaranteed Maximum Price=

2.2.3.1 After receipt of the Construction Manager’s certification of the Guaranteed Maximum Price, the Owner may accept or reject such certification and thus the Guaranteed Maximum Price, by written notice to the Construction Manager. If the Owner fails to accept the Construction Manager’s certification, and thus the Guaranteed Maximum Price, within thirty (30) days after receipt thereof, the certification shall be deemed rejected.

2.2.3.1.1 Acceptance of Guaranteed Maximum Price

- (i) If the Owner accepts the Guaranteed Maximum Price, the Compensation is based on the Subcontract Costs, established through competitive bidding, plus the agreed upon percentage for General Conditions and the agreed upon percentage for Construction Manager’s Fee and Contingency as outlined in the Contract. If the final Cost of the Work plus the Cost for the Construction Manager=s Services is less than the Guaranteed Maximum Price as adjusted for Changes in the Work, one hundred percent (100%) of any such savings shall inure to the Owner=s benefit and Owner will have no obligation to pay such amount to the Construction Manager. If the final Cost of the Work plus the Cost for the Construction Manager=s Services exceeds the adjusted Guaranteed Maximum Price, any such additional cost shall be borne by the Construction Manager and Owner will have no obligation to pay such amount to the Construction Manager.
- (ii) Lump Sum Option: After the Owner has accepted the Guaranteed Maximum Price, the Owner may request to convert the Guaranteed Maximum Price to a Lump Sum

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

Amount at which time the method of compensation to the Construction Manager shall be a lump sum. If the Owner requests to convert to this lump sum method and the CM agrees, the Construction Manager shall provide, inclusive of but not limited to, any and all services required by the Construction Manager, any and all required construction including all subcontracts, all Construction Phase and Post Construction Phase Services, and any other services required to complete the Work as stated in this Agreement, the Contract and the Construction Documents for this Lump Sum Amount. The Lump Sum Amount shall be of equal value, in current dollars, to the Guaranteed Maximum Price that was certified by the Construction Manager and accepted by the Owner, less the Construction Manager's Contingency. The Owner may request to convert to a lump sum contract any time after acceptance of the Guaranteed Maximum Price until fourteen (14) days after a time when all subcontracts for each trade has been awarded. If the Owner opts to convert the method of payment to a Lump Sum Amount the method for compensation and progress payments for all the Work and Services provided by the Construction Manager and any subcontractor shall be based on AIA A201.

2.2.3.1.2 Rejection of Guaranteed Maximum Price

If the Guaranteed Maximum Price is not accepted, the Owner, at its sole discretion, shall have the following options for determination of a Guaranteed Maximum Price acceptable to the Owner and/or otherwise compensating the Construction Manager for completing the Work:

- (1) The Owner may continue to retain the Construction Manager under the terms of this Contract and request another Guaranteed Maximum Price at a later time; or
- (2) The Owner may meet with the Construction Manager and attempt to negotiate a mutually acceptable Guaranteed Maximum Price. If the parties agree on a Guaranteed Maximum Price, the Construction Manager shall formally submit that price for the Owner's acceptance within three (3) business days; or
- (3) The Owner may require the Construction Manager to administer the preconstruction phase of the Contract, including the competitive bidding, and complete the construction of the Work for which the Construction Manager will be compensated for the Cost of the Work, which includes the General Conditions, less the Construction Manager's Contingency, plus the Construction Manager's Fee; or
- (4) The Owner may terminate this Contract, pay to the Construction Manager any Cost of Construction Manager's Services for services rendered prior to the time, assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions of the Construction Manager's Services to another Construction Manager acceptable to the Owner.

2.2.4.4 Insert after the word Acontingency≡ in line 3, the words: AGeneral Conditions,≡

Delete Subparagraph 2.2.6 in its entirety and replace with the following:

AWithin thirty (30) days after receipt of the Construction Manager’s certification of the Guaranteed Maximum Price, the Owner may accept such certification by written notice to the Construction Manager. The guarantee of the Construction Manager shall become effective on the day the Construction Manager receives the Owner=s written notice of acceptance of the certification.≡

Delete Subparagraph 2.2.10 in its entirety and replace with the following:

ADue to the Owner=s tax exempt status, the Guaranteed Maximum Price shall not include any taxes.≡

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

Delete Subparagraph 2.3.1.1 in its entirety and replace with the following:

AThe AConstruction Phase” for each Phase of the Project shall commence on the date specified in a notice from the Owner to the Construction Manager, during which the Construction Manager shall perform Construction Services. As required and at the Owner=s request, the Construction Manager shall provide small scale construction type work (AMinor Work≡) on a cost plus fee or negotiated lump sum basis without initiating the Construction Phase of the Project or obligating the Owner to contract the remainder of the Work to the Construction Manager.

Add the following new Subparagraphs:

2.3.1.2 DELAYS

AThe Construction Manager shall be responsible for any costs, delays or other damages sustained by the Construction Manager or Owner resulting from the Construction Manager’s failure to provide complete Pre-Construction services during the Preconstruction Phase of the Project, specified in Section 2.1 and 2.2, of AIA A121. Specifically, and without limiting the foregoing, it is the responsibility of the Construction Manager to maintain the Project Schedule. The Construction Manager shall notify the Architect and Owner promptly in writing if the Construction Manager anticipates that it will not be able to comply with the Project Schedule. If the Construction Manager so notifies the Architect and Owner, and if, in the opinion of the Owner as reasonably exercised, the Construction Manager falls behind in the Project Schedule for any reason other than a delay for which the Construction Manager

Construction Manager: _____ Bank: _____

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has received an extension of time by the Owner, the Construction Manager shall take whatever steps that may be necessary to improve its progress and shall, if requested by the Owner, submit operational plans to demonstrate the manner in which the lost time may be regained. If the Owner determines, in its sole discretion, that the Construction Manager or any of its Subcontractors is responsible for a delay in the progress of the Work, the Construction Manager shall increase, in connection with the performance of the Site-Related General Conditions, and shall cause the Subcontractors to increase, in connection with their performance of the respective portions of the Work pursuant to Subcontracts, the number of workers, the number of shifts, the days of work and, to the extent permitted by law, institute overtime operations, all at the cost of the Construction Manager and without additional cost to the Owner, in order to regain any time lost and maintain the Project Schedule. Failure of the Construction Manager to comply with the provisions of this subparagraph 2.3.1.2 shall constitute a reasonable basis for the Owner to determine that the Construction Manager is not prosecuting the Work with such diligence as will assure completion within the approved Project Schedule. Upon such determination and with written notice to CM, the Owner may, without thereby waiving any other right or remedy hereunder, at law or in equity, terminate, in accordance with the applicable provisions of this Contract, the Construction Manager's right to proceed with the performance of this Contract.

2.3.1.3 FINAL COMPLETION

Final Completion of the Work. The Work for the entire Project, including any Change Orders, shall be deemed "finally complete" on the date upon which all of the following conditions are met: (a) the Architect has certified in writing to the Owner that all of the Work has been finally completed and the Owner shall have received evidence satisfactory to the Owner establishing that all Work, including all "Punch List" items, has been fully and satisfactorily completed in a good and workmanlike manner, all in strict conformance with the Contract Documents and in full compliance with governing laws and regulations of authorities having jurisdiction and any legal requirements; (b) all final certificates of approval relating to the Work and the contemplated uses of the Project shall have been issued and delivered to the Owner; (c) all required receipts, releases of liens, affidavits, waivers, guarantees, warranties, bonds, record drawings, and any other documents required under this Contract or the Subcontracts shall have been issued and delivered to the Owner; and (d) all testing and training related to the installation of any equipment or materials installed as part of the Work has been received and accepted by the Owner.

2.3.2 ADMINISTRATION

2.3.2.1 Delete the words Alist previously reviewed≡ in line 7 and replace with the following: AOwner-approved bidders' list≡

2.3.2.1 Delete the third sentence in line 9 beginning with the words AThe Owner≡ and replace with the following: AThe Construction Manager shall then determine, subject to objection of the Owner and Architect, which bids will be accepted.≡

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

2.3.2.1 Delete the words Aqualified bidders in line 16 and replace with the following: Abidders on the Owner-approved bidders' list

Delete Subparagraph 2.3.2.2 in its entirety.

2.3.2.4 Insert at the end thereof the following: AAs required by, and as requested by the Owner, The Construction Manager shall schedule, conduct, and maintain minutes for additional weekly meetings relating to specific tasks associated with the Project. These meetings may require the attendance of some or all of the Construction Manager's staff as determined by the Architect. These shall include, but are not limited to, meetings relating to the following topics: communications systems; mechanical, electrical and fire protection systems; project logistics; Building issues; abatements issues, filing and approval issues, and coordination with Owner's vendors, etc. These meetings may at times address portions of the Project that are not solely related to the Construction Manager's scope of work.

2.3.2.5 Delete in its entirety and replace with the following:

AThe Construction Manager shall be in strict compliance with all time periods relating to his performance under the Contract Documents that are set forth in the Project Schedule. The Construction Manager shall promptly and diligently perform, or cause to be performed, the Work in accordance with the time periods set forth in the Project Schedule.

Add the following new Subparagraphs:

2.3.2.8 SHOP DRAWING SCHEDULE

Within fourteen (14) days of the start of the Construction Phase, the Construction Manager shall submit to the Owner a detailed shop drawing schedule. This schedule shall list all required shop drawings, outline time frames for submission, review and approval of these shop drawings detail the schedule in a way that best meet the Owner's objectives and the Project Schedule. The shop drawing schedule shall be approved by both the Owner and Architect and submission times shall be spaced at reasonable intervals so to prevent multiple submissions for review by the same discipline for the same period of time. The Construction Manager shall incorporate reasonable times for review by the Architect and Owner. The Construction Manager shall periodically review with the Architect the submittal and approval schedule and prioritize submittals requiring early review. The Construction Manager shall maintain a detailed shop drawing log and shall update and submit this log to the Owner and Architect one (1) day prior to the weekly Project meeting.

Unless Construction Manager is notified in writing of a specific need for an extended period of time due to the nature or extent of the Shop Drawings being submitted, Shop Drawing review shall be limited to a maximum period of five (5) business days by each design professional with a maximum aggregate period of ten (10) business days.

2.3.2.9 SUBMITTAL / SHOP DRAWING SYSTEM PACKAGES

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

The Construction Manager shall provide the Owner with complete and detailed ATurnover Packages,” which shall contain all pertinent information of the systems being installed under the scope of work. These packages shall include shop drawings, as-built drawings, certificates, test reports, cut sheets, design specifications, specification sheets, operation manuals and instructions, etc. These ATurnover Packages≡ shall also include detailed specifications on each component of each system, shall be organized system by system and shall incorporate submissions of various trades into singular system packages.

2.3.2.10 REQUESTS FOR INFORMATION

The Construction Manager shall submit all requests for information (ARFI≡) in writing to the Architect. The Construction Manager shall maintain a log of RFIs and update the log for submission to the Architect one (1) day prior to weekly Project meetings.

2.3.2.11 CONSTRUCTION MANAGER’S SUPERVISORY PERSONNEL

The Owner shall have the absolute right, in its sole discretion, to reject the individuals proposed by the Construction Manager for such positions as Project Manager, Project Superintendent and other staff / supervisory positions associated with the Project. Once approved, such individuals may not be removed, or others substituted, without the Owner’s prior approval in each instance, unless they cease to be employed by the Construction Manager. The Owner’s right to approve or disapprove the individuals to be assigned to the Project shall continue throughout the duration of the Project so that, if the Owner becomes dissatisfied with the performance of the Project Manager, Project Superintendent, or any other staff / supervisory person at any time, the Owner may require, upon three (3) days written notice to the Construction Manager, that the Construction Manager submit to the Owner for approval substitute persons to take over the duties and obligations of the Project Manager, Project Superintendent, or any other staff / supervisory person.

2.4 PROFESSIONAL SERVICES

Insert before the first sentence of Paragraph 2.4 the following:

AThe Construction Manager shall provide competent construction professionals and other Construction Manager personnel as specified in Exhibit D and as stipulated at the time of the Agreement. The Construction Manager shall at all times have members of his professional construction staff, as stated in Exhibit D, present at the Building, inclusive of but not limited to, when any of the following activities are taking place: when actual construction is taking place, for delivery of material and equipment, for any testing and/or system certification, for any required surveying, when the Architect and/or Owner are present and the Owner requests the presence of the Construction Manager or when any employee of the Construction Manager and any subcontractors or any of the subs to the sub-contractors are in the Building performing any task required for the completion of the work. The Construction

Manager shall make available specific members of his professional construction staff as required by the Owner.≡

ARTICLE 3; OWNER’S RESPONSIBILITIES

3.1 Information and Services

3.1.1 Delete the word Afull≡ in line 1 and replace with the following: Aavailable≡.

Delete section 3.1.2 in its entirety.

3.1.3 Delete in its entirety and replace with the following:

AAfter the Construction Manager submits the first Preliminary Cost Estimate for each Phase of the Project and the Architect has reviewed and evaluated this information, the Owner and Architect shall establish and update an overall budget for the Project, based on consultation with the Construction Manager, which shall include contingencies for changes in the Work.≡

Delete section 3.1.4 in its entirety.

3.2 OWNER’S DESIGNATED REPRESENTATIVE

Insert the following new second sentence:

AHowever, the Owner may at any time substitute another representative upon seven (7) days prior written notice to Construction Manager.≡

3.3 ARCHITECT

Insert after the words AAIA Document B141” in line 4, the following: Aas may be amended for this Project.≡

Delete the second sentence of the paragraph in its entirety.

Delete the last sentence of the paragraph in its entirety.

3.4 LEGAL REQUIREMENTS

Delete the last sentence of the paragraph in its entirety.

ARTICLE 4; COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

4.1.1 Insert the following as the basis for compensation and Payment for preconstruction services:

AFor the Preconstruction Phase Services described in, but not limited to, Paragraph 2.1 and 2.2 of this Agreement the Construction Manager=s compensation shall not exceed the Amount of \$_____. The Construction Manager shall provide supervisory and construction management staff to perform the Preconstruction phase services as stated in Exhibit D.≡

4.1.2 Delete in its entirety and replace with the following:

ACompensation for Preconstruction services shall based on the percentage complete of the required Preconstruction Services.≡

4.1.3 Delete in its entirety.

4.2.1 Delete the phrase “the Construction Manager’s invoice” in line 1 and replace it with the following: “Owner’s receipt of a proper invoice from the Construction Manager which is sufficiently detailed to satisfy Owner=s accounting requirements.≡

4.2.2 Insert after the word Apayable≡, the following: Aforty five (45) days.≡

4.2.2 Delete the phrase “Construction Manager’s invoice is received by Owner” in the first sentence and replace it with the following: “Owner’s receipt of a proper invoice from the Construction Manager which is sufficiently detailed to satisfy Owner=s accounting requirements.” Delete the second sentence in its entirety.

ARTICLE 5; COMPENSATION FOR CONSTRUCTION PHASE SERVICES

Delete section 5.1.1 in its entirety and replace with the following:

AThe Construction Manager=s AGeneral Conditions≡ shall include: (i) the Construction Manager=s compensation for all costs associated with performance of the Work as described in Paragraph 2.3; (ii) any costs required for the Construction Manager to complete the Work or required as part of AIA A201 and to complete the construction as required by the Contract or Construction Documents; and (iii) any costs normally associated with or included in the cost for General Conditions for a General Contractor administered construction project of similar scope, inclusive of but not limited to, all costs described in Paragraphs 6.1.1, 6.1.2,

Construction Manager: _____ Bank: _____

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6.1.5, 6.1.6 (excluding 6.1.6.4), 6.1.7, 6.1.8, and 6.1.9. The ACost of the Work≅ shall also include Construction Manager’s Contingency.≅

Add the following new Subparagraphs:

5.1.1.1 AFor compensation of these General Conditions, the Construction Manager shall be paid an amount equaling 7 % (percent) of the total subcontract costs required to complete the Work as stated by the Contract and the Construction Documents.

5.1.1.2 AFor compensation of the Construction Manager=s Fee, the Construction Manager shall be paid an amount equaling 4 % (percent) of the total subcontract costs required to complete the Work as stated by the Contract and the Construction Documents.

5.1.1.3 ASubcontract Costs shall, include but not be limited to, the costs for all Labor, equipment and materials to be manufactured, fabricated, and/or installed on, in and around the Main Building in order to complete the construction of the Work as required by the Construction Documents and the Contract, inclusive of but not limited to, all costs described in Paragraphs, 6.1.3, 6.1.4 and 6.1.6.4.≅

5.1.1.4 “Construction Manager=s Contingency≅ means the maximum amount that the Cost of the Work and the Cost of the Construction Manager’s Services may increase before the Guaranteed Maximum Price is reached. The Construction Manager=s Contingency shall not exceed the following percentages of the Cost of the Work based on when the Guaranteed Maximum Price was established:

<u>Guaranteed Maximum Price established</u>	<u>Maximum contingency</u>
Prior to 100% construction documents	<u> </u> % percent
100% construction documents but prior to execution of all major Subcontracts	<u> </u> % percent
After execution of all major Subcontracts	<u> </u> % percent

Add the following to Subparagraph 5.2.1:

“All savings within the Guaranteed Maximum Price shall be returned in full to the Owner.”

5.3 CHANGES IN THE WORK

Delete Subparagraph 5.3.1 in its entirety and replace it with the following:

“Owner initiated or design required changes made during the design process and during generation of the Construction Documents prior to execution of Amendment No. 1 shall not

alter the Guaranteed Maximum Price unless such change is a significant material change or significantly modifies the scope of the Work. The Guaranteed Maximum Price will not be altered for unforeseen conditions which the Construction Manager should have reasonably observed or anticipated prior to the Owner's acceptance of the Guaranteed Maximum Price. Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1, including if and when the Owner opts to change the method of compensation and payment to a lump sum, shall be made on the basis of Subcontract Costs plus the percent of Subcontract Costs for the Construction Manager's General Conditions, as stated in Subparagraph 5.1.1.1, plus the percent of Subcontract Costs for the Construction Manager's Fees as stated in Subparagraph 5.1.1.2

Delete Paragraph 5.3.4 in its entirety.

ARTICLE 6: COST OF WORK FOR CONSTRUCTION PHASE

6.1.1 Delete the word "only" in line 3 and replace with the following: "but not be limited to"

Rename Paragraph 6.1.4 the following:

ACOSTS OF MATERIAL AND EQUIPMENT INCORPORATED IN THE SUBCONTRACT COSTS

6.1.4.1 Delete the period (.) at the end of the sentence and replace with the following: Atesting and certification of any of these materials and equipment, and any other costs for any work, including labor, materials or equipment normally performed by subcontractors under industry standard construction practices shall be incorporated into Subcontract costs.

6.1.6 MISCELLANEOUS COSTS

Delete Paragraph 6.1.6.2 in its entirety.

6.1.6.3 At the end of the sentence insert the following: AOnly those costs for fees generally required as part of a general contractors or subcontractors scope of work.

6.1.6.8 Delete the words Amediation and arbitration.

Rename Paragraph **6.2** the following: **ACOSTS INCLUDED IN THE CONSTRUCTION MANAGER'S GENERAL CONDITIONS**

6.2.1 Delete Section 6.2.1 in its entirety and replace with the following:

The Cost of the Work shall include all of the Construction Manager's expenses as described in this section 6.2.1. Compensation for these costs shall be included in the Construction Manager's Compensation for General Conditions and shall include, but not be limited to, the following:

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office.
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office.
- .3 Overhead and general expenses.
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work.
- .5 Rental costs of machinery and equipment.
- .6 Costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

ARTICLE 7: CONSTRUCTION PHASE

7.1.7.1 Insert after the words “percentage completion” in line 2, the following: “as determined by the Architect”

7.2.4 In line 3, delete the words “Mediation or arbitration” and insert the word “Resolution.”

ARTICLE 8; INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

Insert the following at the end of Paragraph 8.1:

“The Construction Manager shall purchase and maintain, as primary Insurance, minimum limits of Insurance as set forth below to protect itself from claims arising out of or resulting from the Construction Manager’s operations under the Contract, whether such operations are undertaken by the Construction Manager, any Subcontractors, and/or by any person and/or entity for which any of the foregoing may be liable:

- 1) Claims under workers compensation, disability benefits, and other similar employee benefit acts;
- 2) Claims for damages for bodily injury, occupational sickness or disease, or the death of any employee of the Construction Manager, and/or any Subcontractors;
- 3) Claims for damages for of bodily injury, occupational sickness or disease, or the death of any person other than an employee of the Construction Manager or Subcontractor.

- 4) Claims for damages for Personal and Advertising injury which are:
 - (a) Sustained by any person as a result of an occurrence directly or indirectly related to the employment of such person by the Construction Manager, and/or,
 - (b) Sustained by any other person.
- 5) Claims for damage to the Work, including loss of use, and including the cost to remove, replace, or restore the Work, which arise from injury to or destruction of tangible property, or arise from the inadequate installation of, or provision of, or defects in, the Work,
- 6) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and/or
- 7) Claims for damages because of bodily injury or death of any person or because of property damage arising out of any motor vehicle, machinery or equipment.”

Insert the following new Subparagraph 8.1.1.0:

Insurance Definitions

“Advertising Injury” – An injury arising from advertising activities, employee publications and all other oral, written, televised, videotaped, electrically transmitted or any otherwise disseminated materials, for: Libel, slander, defamation, or disparagement; Violation of right of privacy; Misappropriation of ideas; Infringement of copyright, trademark, title, or slogan; or Unfair competition.

“Bodily Injury” – The definition of bodily injury is to include physical injury, sickness, disease, death, mental injury, emotional anguish, shock or humiliation.

“Occurrence” - An event, or continuous or repeated exposure to conditions, which cause injury during the Policy period. All such exposure to substantially the same general conditions at or emanating from the insured location or insured project shall be deemed one “occurrence.”

“Personal Injury” – Injury sustained as a result of wrongful eviction, false arrest, detention or imprisonment, malicious prosecution, libel, slander or defamation, invasion of privacy, wrongful entry or dismissal, or discrimination.

“Property Damage” – All risk of physical loss of or damage to real and personal property, including the loss of use thereof.

Insert the following in Paragraph 8.1.1:

“Workers’ Compensation and Employer’s Liability Insurance as required by all applicable local, state and/or federal laws, and including a Voluntary Employers Liability Rider. All certificates of insurance must specifically note that the statutory provisions of the state or district where the Work is located apply. The Employer’s Liability Insurance shall be written for no less than the following limits, or for an unlimited amount if allowable by the appropriate state of jurisdiction:

- (a) Bodily Injury by Accident - \$1,000,000 Each Accident
- (b) Bodily Injury by Disease - \$1,000,000 Policy Limit
- (c) Bodily Injury by Disease - \$1,000,000 Each Employee”

Delete the lines and descriptions immediately following Paragraph 8.1.2 and replace as follows:

“Comprehensive General Liability Insurance (broad form), written on an “occurrence” basis, including a per-project/per-location amendment to the general aggregate limit. Such policy shall provide cover for Bodily Injury and Property Damage, and for Personal & Advertising injury:

- (a) Minimum Limits of Liability:
 - (i) Bodily Injury and Property Damage Per Occurrence Combined Single Limit: \$1,000,000
 - (ii) General Aggregate: \$2,000,000
 - (iii) Products and Completed Operations Per Occurrence and Aggregate: \$2,000,000
 - (iv) Personal & Advertising Injury: \$1,000,000
 - (v) Medical Payments: \$10,000
- (b) The Comprehensive General Liability Policy shall provide insurance for the Construction Manager for Bodily Injury (including mental anguish and emotional distress) to third parties, Personal Injury to third parties, and Property Damage to third parties’ property, other than to the Work, arising out of or resulting from:
 - (i) Operations of the Construction Manager or it’s employees, called “Premises Operations”;

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

- (ii) Work performed by any of the Subcontractors, called “Sublet Work” or “Independent Construction Managers”;
 - (iii) Broad Form Construction Manager’s Liability, called “Hold Harmless Clauses” or “Indemnity Agreements”;
 - (iv) Products Liability and Completed Operations Insurance covering claims arising from the work during the duration of the project and for a period of two years after the completion of the project;
- (c) Such policy shall contain no restriction on work operations involving underground structures, piping, utilities, sewers, excavating, sheeting, shoring and/or similar constructed improvements;
 - (d) Such policy shall contain no restriction on claims arising from property damage caused by explosion and/or collapse of or damage to underground structures, piping, utilities, sewers, excavating, sheeting, shoring, and/or similar constructed improvements.

The Construction Manager’s insurance required under this paragraph shall be written for no less than any limits of liability as herein specified, or as required by law, whichever is greater, by a company or companies licensed to do business in the State of New York, and/or in the district where the Work is located. Such companies shall have a minimum “A-” or better policyholder’s rating, and a “Class XI” or better financial rating as listed in the most current edition of the A.M. Best Insurance Guide available on the date of the execution of the Contract.”

Insert the following in Paragraph 8.1.3:

Comprehensive Automobile Liability insurance, providing coverage for Bodily Injury and Property Damage for claims arising from the operation, use, and/or loading and unloading of any motor vehicle:

- (a) Limit of Liability - \$1,000,000.
- (b) The policy shall contain no exclusion for liability assumed under contract.

Insert the following in Paragraph 8.1.4:

Excess or Umbrella Liability Insurance in an amount not less than \$25,000,000 following the forms and amounts of primary General Liability, Automobile, and Workers’ Compensation and Employers Liability Insurance as described in Subparagraph A hereof.

Construction Manager’s Pollution Legal Liability Insurance, with limits not less than \$2,000,000 per loss with a \$5,000,000 aggregate to provide coverage for any environmental claims incurred in connection with the Contract, and occurring on or away

from the premises. Policy shall include coverage for both third party pollution liability and remediation. Policy shall include Bank as a Named Insured and shall include cover for completed operations for a two (2) year period beyond the completion of the contract.

Errors and Omissions coverage with limits no less than \$5,000,000 per occurrence and \$5,000,000 any aggregate, providing coverage for loss or damage resulting from Construction Manager’s professional errors and omissions or wrongful acts committed in the course of advising on any and all environmental matters; and/or wrongful acts committed in the course of rendering, or failing to render, professional services, such as architectural, engineering, surveying, or other such services, which are undertaken in connection with the Contract.

Unless specifically excepted by the Bank, Builder’s Risk Insurance providing coverage to all supplies, materials, and equipment, required for the Work, until such supplies, materials, or equipment is installed and accepted by the Bank.

All of the insurance coverage described in this Article 8 maintained by the Construction Manager shall provide that:

- (1) The Bank shall be included in the policy as Additional Insured, as its interest may appear, with the understanding that any obligation imposed upon the insured parties, including, but not limited to, the liability to pay premiums, shall be the sole obligations of the Construction Manager and not the Bank;
- (2) Construction Manager and its Subcontractors expressly waive all rights of subrogation, set-off, and counterclaim against the Bank for damages payable by Insurance obtained pursuant to this Agreement or any insurance coverage’s applicable to the work. The policies of insurance required to be carried by Construction Manager and all Subcontractors shall provide such Waivers of Subrogation by endorsement or policy language.
- (3) The Construction Manager’s insurance policies shall be endorsed so as to indicate that its policies provide primary and non-contributory coverage for all claims of any type or nature against the Bank, arising out of or resulting from the provision of the Work by the Construction Manager, and/or any Subcontractors. Any other valid and collectable insurance which includes the Bank as Named Insured shall in no instance be considered as primary, co-insurance, or contributing insurance. (The Construction Manager’s policy may allow the Subcontractor’s policy to provide primary cover in the event of a claim arising from the Subcontractor’s negligence.) These policies shall further be endorsed to allow Cross-Claim and Severability of Interest Endorsements for claims

due to the actions and/or inaction of the Construction Manager and/or any Subcontractor.

- (4) All losses shall be payable without restriction on the nature of the Work, the occupation of the Construction Manager or use of the Work and/or the site, or portion(s) thereof.

The Construction Manager shall require each of the Subcontractors to procure and maintain Insurance coverage with Terms and Conditions equal to or exceeding those specified above in this Section 8.1. Such coverage shall remain in effect until the approved completion of such Subcontractor’s portion of the Work, and for an extended period, as specified above, for exposure arising from the completed operations. The Construction Manager shall be solely responsible for ensuring that each such Subcontractor complies with all of the insurance requirements hereunder. The Construction Manager is further charged with monitoring each Subcontractor’s compliance with this provision.

A Certificate of Insurance signed by the insurance carrier or the carrier’s authorized agent stating the limits of the liability and the expiration date of each coverage, and warranting the Construction Manager’s compliance with the above specified provisions shall be delivered to the Bank prior to the commencement of the Work. Additionally, such carrier or such authorized agent shall provide a warranty statement that the insurance requirements under the Article A have been fully met and are covered under such certificate. Should the initial insurance policy expire prior to the final completion of the Work, a renewal certificate and additional warranty statement shall be furnished to the Bank not later than 30 days prior to such expiration date. All certificates shall contain a provision that coverage shall not be canceled, materially amended, or allowed to expire without at least sixty (60) day prior written notice to the Bank.

The Construction Manager shall, at all times through final completion of the Work, carry and maintain, at the Construction Manager’s sole expense, full replacement cost coverages for damages to or loss of the Construction Manager’s assets, including tools, equipment, material, and facilities required for his provision of the Work.

The Owner shall continue to occupy or use a portion or portions of the Work prior to Substantial Completion thereof. The Contractor shall insure that the insurance company or companies providing the property insurance have consented to this occupancy and use by endorsement to the policy or policies. The insurance shall not be canceled or lapsed on account of such partial occupancy or use.

Compliance by the Construction Manager with the insurance requirements set forth in this Article 8 shall not relieve the Construction Manager of any liability arising from any

Construction Manager: _____ Bank:

Date: _____ Date:

indemnity or other such agreement as set forth in the contract documents, nor shall the Construction Manager’s liability, be limited by the amount of any applicable insurance.

Delete in line 1, the words “at least” in Paragraph 8.1.2.2.

Insert in line 1, the number “2” before the word “year(s).” in Paragraph 8.1.2.2.

Delete in line 2, the words, “either ninety (90) days following Substantial Completion or≡ in Paragraph 8.1.2.2.

Insert in line 2 of Paragraph 8.1.2.3 at the end thereof, the words “and shall be as follows:

- Bodily Injury: \$5,000,000 Each Occurrence
- Bodily Injury: \$5,000,000 Aggregate
- Property Damage: \$5,000,000 Each Occurrence
- Property Damage: \$5,000,000 Aggregate≡

Add the following new Subparagraph 8.1.2.4:

If the General Liability coverages are provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2 of AIA A201.

8.2 INSURANCE REQUIRED BY THE OWNER

Delete section 8.2 in its entirety and replace with the following:

The Owner shall not be obligated to procure or maintain any form of fire (property), liability, or other insurance.

Notwithstanding the foregoing, the Owner understands and accepts that because the Owner is not providing such Builders Risk Insurance, that the Construction Manager will provide same within the cost of the GMP as part of the Cost of the Work as a separate direct cost work item (not included within the Construction Manager’s general conditions or fee).

If requested by the Bank, the Construction Manager shall purchase and maintain for the benefit of the Bank, Owner’s Protective Liability Insurance as a separate policy or as an endorsement to the Construction Manager’s Comprehensive General Liability Policy. Such separate policy or endorsement shall be written with the same limits of liability as

specified above. If the Construction Manager is notified in writing by the Bank, prior to the date of the execution of the Contract, of the Bank’s intention to require such Owner’s Protective Liability insurance, the Construction Manager’s costs for providing such insurance shall be deemed to be included in the Contract Sum, as set forth in the Contract. If the Construction Manager is notified in writing by the Bank, following the date of the execution of the Contract, of the Bank’s intention to require such insurance, the Contract Sum, as set forth in the Contract, shall be increased by an amount equal to the Construction Manager’s costs of furnishing such insurance. In either of the aforesaid circumstances, the Construction Manager shall be required to produce satisfactory evidence to the Bank of the cost of such insurance, as the Bank may require. The Bank, at its option, shall have the right to purchase and maintain other insurance to protect itself against claims which may arise out of or result from the actions and/or inactions of the Construction Manager, and/or any Subcontractors, with such other insurance being purchased by the Bank in excess of that provided by the Construction Manager hereunder.

8.3 PERFORMANCE BOND AND PAYMENT BOND

Insert the word \cong in line 1 in between the words “Manager” and “furnish.” in Paragraph 8.3.1.

Delete the last sentence in its entirety in Paragraph 8.3.1.

ARTICLE 9; MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION FOR THE PRECONSTRUCTION PHASE

Delete Paragraphs 9.1.1, 9.1.2 and 9.1.3 in their entirety and substitute with the following:

At the exclusive option of the Owner, all claims, disputes and other matters in question between the parties to this Contract, arising out of or relating to this Contract or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties agree otherwise. Any and all arbitration arising out of or relating to this Contract shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Contract to the extent necessary to the final resolution of the matter in controversy. This Contract to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Contract shall be specifically enforceable under the prevailing arbitration law.

Insert the following new second and third sentences in Paragraph 9.1.4: AAny demand for arbitration made by any party other than the Owner shall not be binding on the Owner. Any demand for arbitration made by the Owner shall be binding on the Owner. \cong

Delete section 9.1.5 in its entirety.

Add a new Paragraph immediately after Paragraph 9.1.6:

9.1.7. At the Owner=s option, the location for settlement of any and all claims, controversies or disputes arising out of or related to this Contract or any breach thereof whether by arbitration or litigation shall be New York, New York.

9.2 DISPUTE RESOLUTION FOR THE CONSTRUCTION PHASE

Delete in its entirety.

9.3 OTHER PROVISIONS

Add the following new Paragraph 9.3.0:

9.3.0 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Bank from and against all claims, demands, damages, losses, expenses, causes of actions or suits of whatever nature, including, but not limited to, attorney’s fees, court costs, medical expenses, and any other necessary indemnities or disbursements, arising out of or resulting from the provision of the Work by the Contractor, and/or any Subcontractors, whether occurring prior to or at any time after final completion of all the Work, provided that any such claim, damage, loss, causes of actions or suits, or expense is caused in whole or in part by any action and/or inaction of, or any breach of any provision of the Contract by the Contractor and/or any of the Subcontractors, and/or anyone for whose act any of them may be or may be construed to be liable, regardless of whether or not such action, inaction and/or breach is caused in part by a party or parties indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right of indemnity which would otherwise exist for the Bank, and shall survive indefinitely beyond final completion of all the Work, beyond the expiration or earlier termination of the Contract, and/or beyond the termination of the Contractor’s and/or any Subcontractor’s right to proceed with provision of the Work.

In any and all claims against the Bank and/or any other of the indemnities by the Contractor, any of the Subcontractors, or any party for whose acts any of them may be liable, or may be construed to be liable, the indemnification obligations of the Contractor under this Subparagraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, and/or any Subcontractors, under workers’ compensation acts, disability benefit acts, or any other employee benefits acts.

The indemnification obligations of the Contractor specified in this Subparagraph shall be an indemnification for professional wrongful acts and errors and omissions of the Contractor committed while advising the Bank on environmental matters and other professional matters in connection with the Contract.

Construction Manager: _____ Bank:

Date: _____ Date:

The indemnification obligations of the Contractor under this Subparagraph shall in no way be limited by the penal sum of any performance bond.

The indemnification obligations of the Contractor under this Subparagraph shall extend to the liability of the Bank, or any of its agents, consultants, or employees, respecting any injury and/or damage arising out of or resulting from the preparation or approval of any maps, plans, drawings, schedules, opinions, reports, surveys, designs, specifications, any elements of the Contract Documents, Applications for Payment, Submittals, and/or any certifications of Substantial Completion or Final Completion, or arising out of or resulting from the Bank's, or any of its agents, consultants, or employees, giving or failing to give directions or instructions, to the extent empowered under the Contract Documents, unless such giving or failing to give directions or instructions is the sole cause of any such injury and/or damage.

No cost or expense paid or incurred for which the Contractor is responsible or liable under this Subparagraph or under any other indemnification provided under any of the Contract Documents, shall be considered as a part of the Contract Sum. The requirements of this Subparagraph shall survive indefinitely beyond final completion of all the Work, beyond the expiration or earlier termination of the Contract, and/or beyond the termination of the Contractor's, and/or any Subcontractor's, right to proceed with his provision of the Work.

9.3.2 EXTENT OF CONTRACT

Delete the last sentence in its entirety.

9.3.4 GOVERNING LAW

Delete in its entirety and substitute with the following:

This Contract and the rights and obligations under this Contract shall be governed by and construed in accordance with the Federal law of the United States of America and, in the absence of controlling Federal law, in accordance with the law of the State of New York, notwithstanding New York's choice of law rules.

Add the following Paragraph 9.3.6:

Any notice or other communication required or permitted to be given or delivered under this Contract shall be in writing and shall be sufficiently given if delivered personally, which shall be required with regard to notices applicable to a material breach, or sent by telegram or cable, or mailed by first-class or overnight delivery mail, return receipt requested, postage prepaid, as follows:

Construction Manager: _____ Bank: _____
Date: _____ Date: _____

To Owner:

Federal Reserve Bank of New York
33 Liberty Street
New York, N.Y. 10045
Attn.: Richard Prisco, Building Services Officer

To Construction Manager:

Attn:

Or to such other address or addresses as either party may from time to time designate to the other by written notice. Any notice shall be deemed to be given when received.

ARTICLE 10; TERMINATION OR SUSPENSION

Delete Paragraph 10.1 in its entirety and replace with the following:

OWNER=S UNRESTRICTED RIGHT TO TERMINATE: Notwithstanding anything in this Contract to the contrary, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate this Contract at any time at its sole discretion, with or without cause, without liability of any kind. In such event, the Owner shall only be obligated to, pay the Construction Manager any Cost of Construction Manager=s Services for services rendered prior to that time and CM’s reasonable demobilization costs. Further, the Owner may assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions of the Construction Manager=s Services to another Construction Manager acceptable to the Owner.

Delete Paragraph 10.2 in its entirety.

Delete Paragraph 10.3 in its entirety.

ARTICLE 11; OTHER CONDITIONS AND SERVICES

Add the following:

Construction Manager: _____ Bank: _____
Date: _____ Date: _____

11.1 COMPLIANCE WITH OWNER RULES AND REGULATIONS: All services provided by and work performed by Construction Manager shall be subject to and comply with all applicable provisions of the Owner=s Building Rules and Regulations. Without limiting the foregoing, Construction Manager shall comply with, and Owner will bear no liability or cost for, the provisions which require the removal of any contractor or subcontractor which the Owner determines is responsible for a labor conflict or dispute that has interrupted or otherwise effected the operation of Owner or Owner services.

11.2 CONSTRUCTION MANAGER’S CONDITIONAL RIGHT OF ENTRY: Any person or persons designated by Construction Manager but subject to the approval of the Owner shall have the right to enter the Owner=s premises at 33 Liberty Street during the Owner’s business hours and upon notice to the Owner or any other reasonable time agreed to by the Owner and subject to the Owner’s security arrangements (including drug testing and finger printing) and the provisions of the Contract for the purpose of performing obligations under this Contract. A security-related denial or restriction of access by Owner either for security reasons or because of an operational requirements shall not constitute a breach of this Contract or affect Owner’s rights or Construction Manager’s obligations. Owner may conduct security investigations relating to Construction Manager personnel having access to Owner’s facilities similar to investigations conducted with respect to Owner’s own employees. Owner may request substitution of Construction Manager agents, employees and representatives for reasons relating to Owner security. It is understood that the person(s) designated by Construction Manager to have access to the Owner’s premises will be Construction Manager’s personnel, unless the Owner is notified and agrees to the contrary.

11.3 MAINTENANCE OF RECORDS: The Construction Manager shall maintain and keep, for a period of at least six (6) years after the date of Final Acceptance, all records and other data relating to the Work. The Owner or the Owner=s representative shall have the right to inspect and audit all records and other data of the Construction Manager relating to the Work.

11.4 DAVIS-BACON ACT: The Construction Manager and all Subcontractors shall be required to pay all laborers and mechanics employed or working upon the site of the Work the full amount of wage and fringe benefits due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor applicable to the class of work performed at the site of the Work. Although the Reserve Banks have taken the position that they are not legally subject to the Davis-Bacon Act and the implementing regulations, (40 U.S.C. §§ 276a et seq. and 29 CFR Part 5) this action is taken in recognition of the policy of the Act. The Construction Manager and all Subcontractors may not rely on the position of the Bank as a defense for noncompliance with the wage requirements of the Davis-Bacon Act.

11.5 SMALL AND DISADVANTAGE BUSINESSES: Owner has a policy of assisting

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

small businesses and disadvantaged small business in participating in the performance of Owner=s contracts. Construction Manager hereby agrees to carry out this policy in the awarding of subcontracts connected with this Contract to the fullest extent consistent with the efficient performance of this Contract. Construction Manager further agrees to furnish to Owner information demonstrating Construction Manager=s compliance with this clause, upon request by Owner.

11.5.1 As used in this Contract, the term Asmall business≡ means a business qualifying as a small business concern under Article 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term Adisadvantaged small business≡ means small business--

- (1) At least 51 percent (51%) owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent (51%) of the stock of the business is owned by one or more socially disadvantaged individuals; and
- (2) whose management and daily business operations are controlled by one or more such individuals. Construction Manager shall presume that socially and economically disadvantage individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and any other minorities, or any other individual found to be disadvantaged by the Small Administration pursuant to Article 8(a) of the Small Business Act.

11.5.2. Construction Manager, acting in good faith, may rely on written representations by its subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

11.6 FORCE MAJEURE: Neither party shall be liable for its failure or delay in performance of its obligations under this Contract due to strikes, wars, revolutions, fires, floods, explosions, earthquakes, statutes or government regulations, or other causes beyond its control.

11.7 JURISDICTION: The exclusive jurisdiction for any legal action or proceeding arising under this Contract shall be brought in the United States District Court for the Southern District of New York, and the parties expressly submit to the jurisdiction of that court.

11.8 SEVERABILITY: If any provision of this Contract is held invalid, illegal, or unenforceable, the remainder of this Contract shall not be affected thereby. If any portion of this Contract is held by a court of competent jurisdiction to conflict with any Federal, State, or local law or regulation, such portion of this Agreement is hereby declared to be of such

Construction Manager: _____ Bank: _____

Date: _____ Date: _____

force and effect as is permissible in such jurisdiction.

11.9 NO DISCLOSURE OF OWNER INFORMATION: Construction Manager acknowledges that any information regarding the Owner, including but not limited to, its operation, business practices, or security procedures obtained by Construction Manager, its agents or employees while performing the Agreement are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner's prior written consent.

11.10 ADVERTISING: Construction Manager shall not use the Owner's name or any adaptation or variation of the Owner's name in any advertising, promotional material, or other publication, or otherwise publicize or communicate Construction Manager's relationship with the Owner, without the Owner's prior written consent.

11.11 TAXES: Notwithstanding any provisions in the Contract to the contrary, the Owner shall not be billed for or obligated to pay any taxes, including local, State or Federal sales, use or gross receipt taxes, from which the Owner, as a Federal Reserve Bank, is exempt pursuant to Section 7 of the Federal Reserve Act (12 U.S.C. § 531).

IN WITNESS WHEREOF, the parties have duly executed this Contract on the dates set forth below:

AGREED :

[SIGNATURE]

[PRINT NAME]

[TITLE]

[DATE]

AGREED :

**FEDERAL RESERVE BANK
OF NEW YORK**

[SIGNATURE]

[PRINT NAME]

[TITLE]

[DATE]

Exhibit B

Schedule of Critical Dates

RFP to Construction Managers (Approximate)
Offerors give written notice to the
Bank of intent to respond
Site Visit
Deadline for receipt of questions
Deadline for receipt of Offeror=s Proposals
Interviews
Date of selection of vendor (approximate)
Construction start
Construction completion

Exhibit D

Key Members of Construction Manager=s Staff

The Construction Manager shall commit the following staff members to the Project at the following minimum level of time commitment:

During Preconstruction Phase of Work:

Project Executive	hrs/week
Project Manager	hrs/week
General Superintendent	hrs/week
Senior Estimator	hrs/week
Estimator	hrs/week
MEP Coordinator	hrs/week
Quality Control Director	hrs/week

During Construction Phase of Work:

Project Executive	hrs /week
Project Manager	Full Time on Site
Asst. Project Manager	hrs/week
General Superintendent	Full Time on Site
Superintendent	hrs/week
Asst. Superintendent	hrs/week
Senior Estimator	hrs/week
Estimator	hrs/week
MEP Coordinator	hrs/week
Quality Control Director	hrs/week

**FEDERAL RESERVE BANK OF NEW YORK
SUPPLEMENTARY CONDITIONS**

The following Supplementary Conditions modify the “General Conditions of the Contract for Construction,” AIA Document A201, Fourteenth Edition, 1987. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. In the event of any inconsistency between the Supplementary Conditions and the General Conditions, the Supplementary Conditions shall govern. The entire contract between the parties shall consist of the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, AIA Document A121/CMc and Document 565, 1991 Edition, dated _____ between _____ (the “Contractor” or “Construction Manager” or “CM”) and the Federal Reserve Bank of New York (“Owner” or “Bank”) as amended by the Bank for this Project (as amended the “Agreement” or “AIA A121”), the AIA Document A201, Fourteenth Edition, 1987 as it may be amended by these Supplementary Conditions for this Project (as amended, “AIA A201”), any Addendums, and the Contract Documents (as such term is defined in Subparagraph 1.1.1 below) (together, the “Contract”). To the extent that any provisions of the AIA A121 conflict with the AIA A201 or any other Contract Documents, the conflicting terms shall be read together and the more favorable interpretation to protect the interests of the Project and the Owner shall prevail.

ARTICLE 1; GENERAL PROVISIONS

1.1.1 The Contract Documents

Paragraph 1.1.1: Delete the first sentence and replace it with:

The “Contract Documents” means the Contract, together with all Modifications thereto, the Construction Documents and Specifications and the Exhibits to this Contract listed in Subparagraph 1.0.1 of the AIA A121, which are attached thereto or deemed to be incorporated in this Contract as they are developed. The Contract Documents constitute the entire agreement between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents do not include any bidding documents, such as any advertisements or invitations to bid, any instructions to bidders, any requests for proposals, any sample forms, any contractor or subcontractor bids or portions or addenda relating to these or any other documents, unless otherwise specifically enumerated in this Contract.

Add the following Subparagraph 1.1.1.0:

The intent of the Contract Documents, once they are seventy-five percent (75%) complete or

Construction Manager: _____ Date:
Owner: _____ Date:

greater, is to include all items reasonably necessary for the proper execution and completion of the Work. The drawings and specifications are mutually reciprocal and complementary. Whatever is required by any one shall be as binding as if called for by all. Where conflicts occur between information stated or shown on the Contract Documents, the Architect shall determine the course of action to be followed by the Contractor. The more expensive method, the better quality, or greater quantity of material, shown, specified, or required, shall govern unless the Architect directs otherwise. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.1.3 The Work

Add the following sentences at the end of the existing Paragraph 1.1.3:

Without limiting the foregoing, “Work” shall have the meaning that is defined in Article 1.1.3 of AIA A201 and shall include in general, but is not limited to, the following: any construction and services required by the Contract Documents which include any services necessary for the completion each of the three (3) separate phases (Phases I, II and III) of the Multi-Floor Renovation of the Owner’s Main Building at 33 Liberty Street (“Main Building”). The Work shall be completed in three (3) phases, I, II and III respectively, which are described in more detail in section 1.0.4 and Exhibit G of this Contract **Each of Phases I, II and III will be constructed and treated as independent projects in which the Owner, at its sole option and discretion, may decide to extend this Contract for a subsequent Phase or to terminate the Contract after the then current Phase of construction is complete. Each of Phases I, II and III will require its own Guaranteed Maximum Price (“GMP”) and each will require the CM to complete all tasks required as part of this Contract as if it was an individual project, unless the Owner waives, in writing, a specific task due to unnecessary redundancy.** The Work shall include all project management and supervision; labor; materials; tools; supplies; equipment; additional services; scaffolding; transportation; licenses; etc., as well as any other methods or construction necessary for the Project completion; any requirements of the CM by the Contract Documents as further defined by the GMP when accepted by the owner for each Phase of the Project, even items or services which are not specifically stated in the Contract Documents, but which are required under standard construction practices for this type of office construction or can be reasonably inferred for by the construction documents; such items shall be assumed to be included in the scope of the Work. The Work shall also encompass any task or service that is required for the Construction Manager to turn over to the Owner a complete and quality finished construction project including all required permit signoffs and inspections from any authorities having jurisdiction. The Work does not include Pre-Construction Services performed by the Construction Manager. The Work may constitute the whole or a part of the Project.

Construction Manager: _____ Date:
Owner: _____ Date:

1.1.4 The Project

Add the following to the end of Paragraph 1.1.4:

Without limiting the foregoing, "Project" shall include the overall undertaking in which the Architect, Owner, Construction Manager and others will participate to complete the necessary building modifications and construction required to completely or partially renovate eight (8) floors of the Main Building in three (3) separate phases as described herein, in general, and as more fully described in Exhibit G of this Contract. Phase I includes all construction required to renovate floors 2, 5 and D Level; Phase II includes construction required to renovate floors 6, 13 and E Level; and Phase III includes construction required for B and C Level. **Each Phase of the overall Project will have its own distinct pre-construction phase, construction phase and post-construction phase. Any references in this Contract to pre-construction, construction or post-construction services shall be understood to apply equally to each Phase of the Project.** Each Phase of the Project shall include all services required under the Contract including the performance and completion of the Work, as well as the services required by the Architect and any other consultants or contractors the Owner may engage to assist in the completion of the Work and any tasks associated with the Project. All Areas under construction have occupied offices, computer and equipment areas adjacent to as well as above and below the floors under construction. Disruptions to these ongoing Bank operations during construction is not acceptable. Additional requirements for each Phase include, but are not limited to, the following:

Phase I construction of the Project shall include the following:

5th Floor Construction: Approximately seventy five percent (75%) of the Floor is to undergo a full scope renovation. The remainder of the Floor is the 5th floor computer room, which will undergo a partial renovation. The scope of work in this, approximate 9000 square foot, area includes: 1) replacement of the drop ceiling, lighting fixtures and ("halon") fire suppression system, which will be replaced by a pre-action or other dry sprinkler system as determined by the A/E team; 2) the installation of ADA compliant audible and visual fire alarms and smoke detectors; and 3) any necessary tie-in of the existing equipment or services such as ductwork, into the new mechanical or electrical systems.

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Owner: _____ Date:

The 5th floor computer room operates 24 hours a day/ 7 days a week and will remain active during the construction. The existing computer room air conditioning consists of a satellite chiller plant that provides chilled water to local Liebert units. This supplemental HVAC system will not be modified under this Project, except as required to meet NYC fire code. This system must remain operational 24 hours a day/ 7 days a week during construction.

NOTE: The 5th floor computer room is an area that is of great importance to the day-to-day operations of the Owner. Construction in this area cannot disrupt these operations. The Owner requires a high degree of supervision and protection during any construction in this area.

2nd Floor Construction: Complete full-scope office renovation of the entire floor.

D Level Construction: Complete full-scope office renovation of approximately 4,000-sq. ft. of area. Partial renovation of the remainder of the floor, which includes approximately 5,000-sq.ft. of corridor and storage area that will have ceilings and lighting demolished and replaced. Much of D Level houses the Main Building's electro-mechanical infrastructure and new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project.

Phase II construction of the Project, **if the Owner decides to proceed as specified in Paragraph 1.1.3 above**, shall include the following:

13th Floor Construction: The Complete renovation of approximately 19,000 sq.ft. A significant portion of this floor, approximately 11,000-sq. ft., will not be under any type of construction and is outside the scope of this Project.

6th Floor Construction: The complete full-scope renovation of the entire floor. This floor has an existing steel and concrete structural slab, which was installed above the building slab to support library files. As part of the CM's basic scope of work, this structure must be removed.

E Level Construction: Includes 38,000 sq. ft. of limited scope renovation with approximately 4,000 sq.ft. of corridor area that will have the ceiling and lighting demolished and replaced. It should be noted that no sprinkle work will be done in the E Level Gold vault. A large area of E Level houses the Main Building's electro-mechanical infrastructure, new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project.

Phase III construction of the Project, **if the Owner decides to proceed as specified in Paragraph 1.1.3 above**, shall include the following:

Construction Manager: _____ Date: _____
Owner: _____ Date: _____

B Level Construction: The complete full-scope office renovation of approximately 3,000-sq. ft. of area. Limited scope renovation of the remainder of the 35,000 sq. ft. area, which includes approximately 4,000-sq. ft. of corridor and storage area that will have ceilings and lighting demolished and replaced. The installation of some of the new sprinkler system will be run exposed in the warehouse, utility, and storage spaces. Some of B Level houses the Main Building's electro-mechanical infrastructure and new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project.

C Level Construction: The complete full scope office renovation of approximately 8,000-sq. ft. of area. Limited scope renovation of the remainder of the 30,000 sq. ft. area which includes approximately 4,000 sq. ft. of corridor and storage area, that will have ceilings and lighting demolished and replaced. Some of C-level houses the Building's electro-mechanical infrastructure, new fire protection systems (Class-E and Sprinkler) may be installed in some of these areas under this Project.

1.1.5 The Drawings

Add the following Subparagraph 1.1.5.0:

Every copy including all originals of Drawings, Specifications, and Shop Drawings for any portion of the security system, vaults or other storage areas for valuable property shall be delivered to Owner upon Final Completion of the Work or other termination of the Contract. No such Specifications, Drawings or Shop Drawings shall be copied or duplicated without Owner's prior written approval. Each copy of such Specifications, Drawings and Shop Drawings shall be serially numbered and Contractor shall maintain a list, by number of the recipient of each such document.

1.2 Execution, Correlation and Intent

Add the following to the end of subparagraph 1.2.1:

The Contract Documents shall be signed in not less than quadruplicate by the Owner and Contractor.

Insert the following after the word Documents in line one of Subparagraph 1.2.3.0
 "once they are seventy-five percent (75%) complete or greater and show 100% design intent,"

ARTICLE 2; OWNER

2.2 Information and Services Required of the Owner

Construction Manager: _____ Date: _____
 Owner: _____ Date: _____

Delete Subparagraph 2.2.1 in its entirety.

2.4 Owner’s Right to Carry Out the Work

Amend Subparagraph 2.4.1 after the word “Contractor” in line 6 by inserting “and the surety or sureties for the Performance Bond and the Labor and Material Payment Bonds given by the Contractor.”

ARTICLE 3; CONTRACTOR

3.1 Definition

Delete the first sentence of Subparagraph 3.1.1 and replace it with the following:

The Contractor is the person or entity identified as Construction Manager in the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor (AIA Document A121/CMc and Document 565, 1991 Edition), dated _____ between _____ and the Bank, inclusive of its rider, and is referred to throughout the Contract Documents as if singular in number.

3.2 Review of Contract Documents and Field Conditions by the Contractor

Add to the following Subparagraph 3.2.4:

If the Owner determines, in its sole discretion, that the Contractor is unnecessarily submitting Requests For Information (“RFI”) and by this is disrupting the progress of the Work and/or the Project, the Owner will so notify the Contractor in writing. After Owner provides such notification, the Contractor shall reimburse the Owner for all costs associated with Architect’s analysis and response for any further RFI’s if the Owner, in its sole discretion, determines that the information required to “answer” the RFI is contained within the Contract Documents.

Add the word “Sub-subcontractors” after the word Subcontractors in line 2 of Subparagraph 3.3.2.

Add the following Subparagraph 3.3.5:

The Contractor and not the Owner shall be responsible for determining the point at which the work of one subcontractor terminates and that another subcontractor commences.

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Owner: _____ Date:

Add the following Subparagraph 3.3.6:

All arrangements for shutdowns, tie-ins, tests, use of elevators, loading docks, any existing Building system, as well as any work effort of the Contractor shall be in conformance with the Building's rules and regulations. The costs for any resulting overtime shall be included in the Contractor's General Conditions.

Add the following Subparagraph 3.3.7:

It shall be the Contractor's responsibility under the Contract to convey equipment, machinery, materials, and any other items required for completion of the Work, into the Building, and through the Building to their designated or required location. The Contractor shall use appropriate conveying methods dictated by the size, weight, and other governing characteristics of the items being conveyed. Where special equipment (such as sidewalk lifts, cranes, or similar items) is required, such equipment shall be included under the Cost of the Work and any costs to the Construction Manager for the supervision or administration of such work shall be included in the cost of the General Conditions. Where it is necessary to remove exterior windows, internal partitions, removable floor slabs, doors, piping, ducts, conduit, and any other items of building construction in order to convey the materials, equipment, machinery, etc. into the Building and to their final destination within the Building, such items shall be removed and replaced under the Contract. Replaced items shall match removed items in all respects. Interrupted systems shall be restored to their original state. In addition, it shall be the Contractor's responsibility under the Contract to protect all Building surfaces, materials, equipment, finishes, etc. in the path of the conveying operations. Such protection shall be constructed of materials adequate for their intended usage, and acceptable to the Owner regarding appearance and adequacy of the protective measures.

Add the following Subparagraph 3.3.8:

Materials or items required in connection with the Work and which are of a size and weight which will allow them to be transported in an existing elevator without overloading the elevator, shall be delivered through the loading and delivery area at times convenient to the Owner, and transported by way of an existing elevator to the floor or general area of the Building where it is to be installed, or to be designated temporary storage locations. The Contractor shall provide suitable hoisting equipment and methods for transporting items which will not be accommodated by existing elevators. If a Hoisting Engineer(s) or any other Labor, or other requirement of any type is necessary for the Contractor's use of the Building's existing elevator(s) it shall be provided for the Contractor under the Cost of the Work.

Construction Manager: _____ Date:
Owner: _____ Date:

Add the following Subparagraph 3.3.9:

Where it would be impossible to convey equipment, machinery, etc. into the Building through an external window or other existing opening due to the size of the item, such items shall be manufactured in such manner that they can be delivered in smaller component parts which can be assembled within the Building at the final location of the item. When the Contractor proposes to use such disassembled items, prior approval first must be obtained from the Owner and the Architect. Where approval is given for delivering items in parts which are to be assembled within the site, such manner of delivery and assembly shall be a basic design feature of the item. Shop Drawings shall be submitted which clearly show the various components and their assembly. The manufacturer of the item shall agree in writing that such method of erection is not objectionable to the manufacturer, and will not adversely affect any warranties or operations of the item. At the Owner's option and prior to shipment from the manufacturer's facility, the equipment or item shall be completely assembled and tested in the presence of a representative of the Owner. The item shall be field assembled at the site with labor satisfactory to the manufacturer and under the supervision of the manufacturer, and shall be proven to be in acceptable operating condition, as determined by the Architect. All cost for the forgoing procedure shall be included in the base lump sum contract proposal.

Add the following Subparagraph 3.3.10:

An existing elevator may be made available upon request and at the discretion of the Owner, depending upon the Owner's other needs. The contractor shall provide notice in writing to the Owner each time the use of elevators is required by the contractor. Care shall be taken by the Contractor in loading equipment, materials and debris in the elevator to avoid damage to the elevator car. The Contractor shall provide and install protective mats, siding and flooring as required for adequate protection of the elevator(s). Contractor shall repair any damage to the Building or equipment caused by the Contractor. Such repairs shall be made to the Owner's satisfaction at a time convenient to the Owner and at no cost to the Owner, regardless of overtime requirements.

Add the following Subparagraph 3.3.11:

The Contractor will be limited in the storage of materials and equipment required for the project to areas of work on the floor level of the Building where work is to be performed, or such other area(s) as designated by the Owner, and shall place upon any area of the Building only such loads as are consistent with the structural capability and safety of such areas.

Add the following Subparagraph 3.3.12:

Work areas for the Contractor and his subcontractors shall be restricted to the area of work,

Construction Manager: _____ Date:
Owner: _____ Date:

on each of the floor levels of the Building where work is to be performed and to other areas related to the work as designated by the Owner.

Add the following Subparagraph 3.3.13:

Space for Contractor’s field office will be made available in the Building by the Owner.

Add the following Subparagraph 3.3.14:

The Contractor, all workmen and other persons requiring access into the Building for any purpose in connection with the contract Work will be required to enter the Building by way of the main entrance, and on each entrance shall report to the Central Watch Room, Protection Division, A Level, to obtain clearance and an escort or identification badge or button permitting them to traffic in the Building. Permission to remove from the Building all packages, tools, tool boxes and lunch boxes will require a building pass and clearance from the aforesaid Central Watch Room in each instance.

Add the following Subparagraph 3.3.15:

To facilitate keeping the premises in clean and orderly condition during progress of the work, the Contractor shall provide and maintain sufficient metal receptacles within the areas of work for temporary placement of rubbish by persons employed by the Contractor.

Add the following Subparagraph 3.3.16:

To the extent applicable to Work under the Contract, the Contractor and each of his subcontractors in execution of the Work shall comply with Rules and Regulations of the Occupational Safety and Health Administration (“OSHA”) United States Department of Labor under authority established by the Occupational Safety and Health Act of 1970 and all amendments to date of Contract signing.

Add the following Subparagraph 3.3.17:

Methods and paths for delivery and storage of materials to be used in the Work, workers travel, and for removal of materials and debris resulting from the Work, in addition to the specific requirements in connection therewith called for elsewhere in the Specifications, shall be subject to Owner’s approval.

Add the following Subparagraph 3.3.18:

The Contractor shall make certain before requesting that any specific space or area within the

Construction Manager: _____ Date:
Owner: _____ Date:

Building be vacated and/or turned over to him for alterations or new work, that he and his subcontractors have on hand sufficient materials and equipment to start work and have sources available for obtaining additional materials and equipment so as to permit completion of work in such space or area without unnecessary interruption or delay after such work has been started. At the request of the Owner, the Contractor shall produce at the work site all materials or equipment necessary for the performance of work requiring a shutdown of the Owner's equipment or Building systems and/or the scheduling of Owner personnel. The Contractor shall produce these materials and equipment a minimum of five (5) working days in advance of the aforementioned shutdown work.

Add the following Subparagraph 3.3.19:

The Contractor shall provide all temporary scaffolding, bridges, hoists, derricks, ladders, barriers at open shafts, and other devices for protection of the workers and the public; and other similar items. All such items shall comply with applicable laws and labor regulations; and shall be promptly removed from the site when their use is no longer required for execution of the work.

Add the following Subparagraph 3.3.20:

Existing alternating-current electricity to be used for temporary power and temporary lighting required by the Contractor will be available for the Contractor's use at sources designated by the Owner. The Contractor will be required to provide, install and maintain temporary wiring and outlets required by the job, from the sources made available to the points of use; and such wiring shall conform with requirements of all governing electrical codes and regulations. The Owner will furnish electrical energy used by the Contractor at no cost to the Contractor; however, care shall be exercised so as not to waste electricity and not to overload electric circuits and panels. All costs associated with the maintenance of full time temporary light and power, including any stand-by personnel, shall be included in the lump sum proposal.

Add the following new Subparagraph 3.3.21:

Details of how and when the various parts of the Work shall be delivered to the Building and performed at the Building shall be worked out by the Contractor, and mutually agreed upon by the Owner, Contractor and the Architect prior to commencement of work to the extent practicable, and while the Work is being performed. The Owner or the delegated representative in each case shall be given adequate notice by the Contractor before actual work in any part of the Building is started.

Add the following new Subparagraph 3.3.22:

Where the staging (phasing) of a project is such that certain mechanical, electrical or other systems will be put in operation for beneficial use by the Owner prior to completion of the entire project; and where such condition requires the use of standby personnel, the cost for such personnel shall be included in the contract amount to provide for operation of the

Construction Manager: _____ Date: _____
Owner: _____ Date: _____

systems twenty-four (24) hours per day and seven (7) days per week.

Add the following new Subparagraph 3.3.23:

The Contractor before commencing work, shall verify all governing dimensions and other conditions at the premises, including any obstacles, and shall examine all adjoining work on which their work is in any way dependent. The Contractor shall not be relieved of responsibility for defective work arising out of defective adjoining work unless notice of such defective work has been filed by the Contractor and acceded to in writing by the Architect before any part of the Work in question is commenced. Requests for additional payments at a later date due to any “unforeseen” conditions which could be observed at the site will not be allowed.

Add the following new Subparagraph 3.3.24:

Nothing in this Agreement shall be deemed to require, or authorize, or permit Construction Manager to perform any act which would constitute design services, or the practice of architecture, professional engineering, certified public accounting, or law. Recommendations, advice, budgetary information, and schedules to be furnished by Construction Manager under this Agreement shall not be deemed to be representations, warranties, guarantees (with the exception of the GMP), or constitute the performance of such licensed professional services.

3.4 Labor and Materials

Add the following Subparagraph 3.4.3 to 3.4:

3.4.3 Substitutions:

3.4.3.1 The materials, products and equipment described in the Contract Documents establish the standard of required quality, function, dimension appearance, durability, performance and manufacturer’s warranty, technical resources and engineering support, as determined by the Architect.

3.4.3.2 Substitution requests, except where delineated as a “no substitution” item in the contract documents, will be considered only if standards are met or exceeded as described above and the Contractor specifically states in the original Proposal.

3.4.3.3 Each substitution request shall include the name of the material, product or equipment item for which substitution is requested and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for a complete evaluation.

3.4.3.4 A statement setting forth any changes in other materials, products, equipment or other Work that incorporation of the substitution would require, shall be included.

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Owner: _____ Date: _____

3.4.3.5 The burden of proof of the merit of the proposed substitution is upon the proposer.

3.4.3.6 The Architect’s decision of approval or disapproval of a proposed substitution shall be final and will be set forth in a written addendum.

3.4.3.7 Contractor shall not rely upon approvals made in any other manner.

3.4.3.8 Contractor’s Responsibilities: If any of the following conditions occur due to substitutions, the Contractor making the substitution shall bear the cost of such conditions, including payment for services rendered by the Architect:

- a) Redesign required for any portion of the Work.
- b) Materials or quantity changes for any portion of the Work.
- c) Delays in any portion of the Work.

3.5 Warranty

Add the following to the end of Subparagraph 3.5.1:

The Owner’s enforcement of any warranty or guarantee given by the Contractor shall not deprive the Owner of any other rights or remedies the Owner may otherwise have.

3.6 Taxes

Delete Subparagraph 3.6.1 in its entirety and substitute the following:

3.6.1 The Contractor understands and agrees that, in view of the Owner’s exemption from state and local taxes, unless otherwise directed and approved by the Owner in writing, all supplies, materials, and equipment to become integral component parts of the Project shall be purchased by the Contractor, the Subcontractor or Sub-subcontractors, as the case may be, in such a manner that there will be neither local nor New York State and/or New Jersey sales or compensating use taxes incurred in respect of supplies, materials and equipment purchased to become integral component parts of the Project. Payment for such supplies, materials and equipment shall be made in accordance with the provisions of this Contract.

3.6.2 In the event the Contractor cannot purchase supplies materials or equipment to become integral component parts of the Project and obtain delivery therefor without payment of a sales or use tax, Contractor shall notify the Owner immediately and shall not make any such purchase without prior written approval of the Owner in each instance.

3.7 Permits, Fees and Notices

Construction Manager: _____ Date:
Owner: _____ Date:

Delete Subparagraphs 3.7.1, 3.7.2, 3.7.3, and 3.7.4 and substitute the following:

3.7.1 The Contractor shall **not** make any application or give any notice to any local or state governmental body or agency therefor for any permit, approval, or license required under applicable law or regulation in connection with the Work without prior written notification to the Owner and authorization in each instance. In the event asbestos abatement is required by the Bank in connection with this project, CM will be required and authorized to obtain such permits and all costs of such permits will be included in the GMP.

3.7.2 The Contractor shall inform the Owner, in advance, of each notice or report to be given or posted or permit, approval or license to be obtained, in order to comply with all applicable laws and regulations relating to the performance of the Work. If the Contractor performs any Work contrary to such applicable laws and regulations, then the Contractor shall assume full responsibility therefore, shall commence any necessary correction of Work promptly after notification by the Owner, shall complete such corrective work as soon as is consistent with good workmanship and shall hold the Owner harmless against any loss as a result of the performance of Work contrary to applicable laws and regulations.

3.7.3 All recommendations of the National Fire Protection Association and the National Board of Fire Underwriters to the extent applicable to the work under the contract are hereby made a part of the specifications and the Contractor shall be responsible for compliance with their provisions.

3.9 Superintendent

Add the words “Project Manager and” to the title of section 3.9

Add the words “Project Manager and” before the word superintendent in line 1 of Subparagraph 3.9.1

Add the words “Project Manager and” before the word superintendent in line 3 of Subparagraph 3.9.1

Add the words “Project Manager and” before the word superintendent in line 5 of Subparagraph 3.9.1

3.10 Contractor’s Construction Schedules

Delete the first sentence of Subparagraph 3.10.1 in its entirety and replace with:

The Contractor shall use the agreed upon schedule approved by the Owner and Architect defined as the approved schedule in the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor (AIA

Construction Manager: _____ Date:
Owner: _____ Date:

Document A121/CMc and Document 565, 1991 Edition), dated _____ between the Construction Manager and the Bank, inclusive of its rider; and this “General Conditions of the Contract for Construction,” AIA Document A201, Fourteenth Edition, 1987, inclusive of its rider.

3.11 Documents and Samples at the Site

Add the words “Changes in Work” before the word “Change” in line 3 of Subparagraph 3.11.1

Add the following Subparagraph 3.11.2:

The Contractor shall permit the Owner, or an auditor appointed by the Owner, to have access at all reasonable times to all records, correspondence, account books, invoices, payrolls, and other records relating to the Contract, to the premises and to the construction work for the purpose of checking the cost of work, ascertaining the progress, and inspecting the character of the Work. For these purposes the Contractor shall preserve all records for a period of six (6) years after the final payment.

3.12 Shop Drawings, Product Data and Samples

Delete the word “approve” in line 1 of Subparagraph 3.12.5.

Add the following to the end of Subparagraph 3.12.5:

No claim for extra cost or for extension of Contract time will be granted to the Contractor by reason of the Contractor’s or his subcontractor’s failure to submit shop drawings and/or samples in sufficient time.

Add the following Subparagraph 3.12.7.1:

Shop Drawings submitted for the Architect’s review shall be numbered consecutively and, insofar as tractable, shall be uniform in size. Drawings shall indicate all necessary dimensions pertaining to construction and erection; including manufacturer’s recommended clearances for access and maintenance of all equipment; arrangement and sectional views; complete details including relationship and connection with adjoining work or other trades;

kind of materials, thickness, and finish. Should manufacturers recommended clearances not be indicated on shop drawings and proper clearances not provided in the complete installation, the Contractor shall modify installed work to provide proper access and clearance at no additional cost to the Owner.

Add the following Subparagraph 3.12.7.2:

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Owner: _____ Date:

Prior to submittal, the Contractor shall thoroughly check Shop Drawings of his subcontractors for accuracy, to see that work contiguous with and having bearing on work shown on the Shop Drawings is accurately and clearly shown and that the indicated work complies with the contract requirements. Shop drawings shall be checked by the Contractor against actual field conditions, including dimensions of existing conditions, prior to submittal. Shop drawings found to be inaccurate or in error by the Contractor shall be returned to his subcontractor for correction before submittal to the Architect. Shop Drawings shall bear evidence in the form of a review stamp bearing the date and the reviewer's name or initials that such drawings have been checked by the Contractor for conformance with the requirements stated above; and his approval noted thereon.

Insert the following to Subparagraph 3.12.8 at the end of sentence in line 7:

If no specific mention is made by the Contractor of additional cost requirements at the time the Shop Drawings are submitted, requests for additional costs for the item(s) covered by the Shop Drawings will not be considered at a later date.

Add a new Subparagraph 3.12.12:

One reproducible transparency and two blue and white print copies shall be submitted of each Shop Drawing until final review is obtained. Each Shop Drawing shall have a clear space large enough for Architect's review stamp. Shop Drawings submitted without reproducible transparency will be returned without being reviewed.

1. After completion of checking, the Architect will obtain a print or prints of each transparency for his records and return the transparency to the Contractor.
2. Of the Shop Drawings returned "Resubmit," "Make Corrections Noted," "Submit Specified Item," or "Rejected," the original drawing shall be corrected, a new transparency and two prints made and resubmitted until final review is obtained.
3. Of Shop Drawings returned "No Exception Taken," the Contractor shall obtain and distribute such number of prints as required for field distribution to all trades performing work adjoining or related to the work or item represented by the Shop Drawings. A copy of all final reviewed Shop Drawings shall be kept at the site by the Contractor, available at all times for examination by the Owner and the Architect and turned over to the Owner in final system turnover packages.

Construction Manager: _____ Date:
Owner: _____ Date:

Add a new Subparagraph 3.12.13:

Eight (8) copies shall be submitted of manufacturers descriptive data including catalogue sheets for materials, equipment and fixtures, showing sizes, dimensions, performance characteristics, and capabilities, wiring diagrams and controls, schedules, and other pertinent information as required. Where printed data describe more than one product or model, the product and all features which are to be furnished shall be clearly identified. Two copies of submissions, stamped either "No Exception Taken," "Make Corrections Noted," "Resubmit,"

"Submit Specified Item," or "Rejected," will be returned to the Contractor after being reviewed. Eight (8) copies of items requiring resubmittal shall be submitted with the required corrections.

Upon completion of the Work, the Contractor shall provide the Owner with three sets of digital files on CD-ROM disks of the final versions of the above. The cost of digitizing the files and preparation of the CD-ROMs may be included in the Subcontract Costs.

Add a new Subparagraph 3.12.14:

When Shop Drawings indicate changes which may be acceptable, and such changes affect other related work or the work of other trades, the Contractor shall assume the responsibility and cost of all such related changes and/or charges.

Add a new Subparagraph 3.12.15:

During progress of the work the Contractor shall keep a careful record of all changes and corrections from layouts shown in the Contract Drawing, in the installation of equipment, ducts, supply and return outlets, piping, electric conduit, boxes and outlets, circuit panels and other mechanical or electrical service items.

Add a new Subparagraph 3.12.16:

Soon after commencement of work at the Owner's premises, the Architect will furnish to the Contractor one set of the Contract Drawings on sepia transparencies or other reproducible media, and one set of computer diskettes containing digital files of the pertinent construction documents. These prints and computer files shall be kept at the site in the custody of an authorized representative of the Construction Manager, unless otherwise directed. On these prints and computer files all changes and revisions to the installations as shown shall be recorded by the Contractor as they occur. Upon completion of the Work, the Contractor shall revise the digital drawing files on the computer disks to reflect all "As Built" conditions, identify the computer files as "As Built" and forward them to the Architect, along with two plots of all the completed "As Built" drawings, for review. No final Certificate for payment will be issued, no retention reduced for the Trade involved, until such files have been received and determined to be satisfactory by the Architect and accurately show the "As

Construction Manager: _____ Date: _____
Owner: _____ Date: _____

Built” conditions. The costs associated with submission of “As Built” drawings may be included in Subcontract Costs, however, it will be the responsibility of the Contractor to see that all “As Built” drawings are completed to the satisfaction of the Architect. If any of the Subcontractors fail to meet any of the requirements of this section, the Contractor shall bear all costs associated with providing the required “As Built” drawings. The software application shall be as directed by the Owner. The Contractor shall be responsible for conveying the information in a virus-free format.

Add a new Subparagraph 3.12.17:

Where installation changes are made to conform with Instruction Sheets issued by the Architect, such changes shall be incorporated on the black and white Record print and computer disk. Changes in installation from that shown on Instruction Sheets shall also be recorded on the black and white print of the Instruction Sheets and all computer disks.

Add a new Subparagraph 3.12.18:

Unless Construction Manager is notified in writing of a specific need for an extended period of time due to the nature or intent of the Shop Drawings being submitted, Shop Drawing review shall be limited to a maximum period of five (5) business days by each design professional with a maximum aggregate period of ten (10) business days.

3.13 Use of Sites

Add the following subparagraphs:

3.13.2 The Contractor shall coordinate all of the Contractor’s operations with, and secure approval from the Owner before using any portion of the Site.

3.13.3 The Contractor agrees to reimburse the Owner for any expense or loss the Owner may incur by being deprived of any use of the project or portion thereof by reason of any Work which is defective, or other than that specified, or does not perform the function for which it was designed, and will reimburse Owner for any expense in connection with any damage done to any property by reason of any of said causes, or by reason of the removal and replacement of Work done by the Contractor, the Subcontractors, the Sub-subcontractors or the Suppliers.

3.13.4 As a basis of the Contract, all work at the Owner’s premises shall be performed within normal working days and hours of the various building trades employed for work under the Contract, except for any disruptive work and shut-downs or as otherwise required by Contract Documents or for deliveries required to be made on over-time. The Owner must approve any work not within normal days and hours but such approval will not be unreasonably withheld. The Owner shall not pay the Contractor for the cost of any overtime work unless such overtime work has been expressly authorized by the Owner in writing. If the Owner has so authorized the Contractor to perform such overtime work, the Owner shall

Construction Manager: _____ Date:
Owner: _____ Date:

pay the Contractor, in addition to the amounts it would otherwise hereunder have paid the Contractor for such work, the cost of such overtime work.

3.13.5 Where the Contractor is required to make deliveries of structural steel, air conditioning units, fans, or any other large item; and where such deliveries are required to be delivered on weekends or after regular hours due to local law or traffic requirements; or where deliveries are required to be made on overtime for any reason whatever, all costs for such overtime shall be included in the Guaranteed Maximum Price.

3.13.6 The Contractor shall perform the Work in a manner which will minimize shutdowns of existing operating items or systems. This includes items or systems on standby, i.e., UPS or Emergency power system. When performance of the Work requires the shutdown of any existing operating item or system, the Contractor shall submit to the Owner, no later than four weeks from the date of this Contract, a detailed listing of these required shutdowns, which shall include a complete description of the work, the trades involved, the expected duration of the shutdowns, and the time frame in which the Contractor would like to perform this work. After receipt of the complete shutdown list and as dates for system shutdowns become available, the Owner will forward to the Contractor dates on which the shutdown work may be performed. Such shutdowns shall take place only when the Contractor has obtained prior written authorization for the shutdown from the Owner, has confirmed the schedule of this shutdown in writing at least five working days in advance of the work, and meets all requirements of Article 3.3.17 as amended. All shutdowns including, but not limited to, those required for or by the Work of Heating, Ventilating and Air Conditioning, Plumbing, Electric, or Other Systems, shall be performed on overtime, including testing of Work installed or altered by any trade. All shutdowns, tie-ins, tests, etc. shall be in conformance with the Owner’s Building rules and regulations. The costs for all such overtime shall be included in the GMP.

Add the following to the end of Subparagraph 3.14.1.

This includes any cutting, removing, patching, and/or replacing of existing systems, slabs, floors, walls, ceilings, finished surfaces, conduits, ducts, piping, cables etc. Patching and replacement of any of the above shall match existing construction and finishes in all respects, as judged by the Architect, and all systems shall be restored to their original function without impairment and to their original quality.

3.16 Access to Work

Delete Subparagraph 3.16.1 and replace with the following:

The Owner, the Architect, and the representative of either of them shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access so the Architect and Owner may perform their functions under the Contract Documents.

Construction Manager: _____ Date: _____
Owner: _____ Date: _____

ARTICLE 4; ADMINISTRATION OF THE CONTRACT

4.1 Architect

Delete Subparagraph 4.1.2 and replace with the following:

4.1.2 The Architect has the authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise provided by written notice from the Owner to the Architect and the Contractor. All of the Owner’s instructions to the Contractor shall be issued through the Architect unless the Owner determines otherwise.

Delete Subparagraph 4.1.4.

4.2 Architect’s Administration of the Contract

Add the words, “Change in Work” after the word “Orders” in line 1 of Subparagraph 4.2.8

4.3 Claims and Disputes

Add a new Subparagraph 4.3.1.1:

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Bank from and against all claims, demands, damages, losses, expenses, causes of actions or suits of whatever nature, including, but not limited to, attorney’s fees, court costs, medical expenses, and any other necessary indemnities or disbursements, arising out of or resulting from the provision of the Work by the Contractor, and/or any Subcontractors, whether occurring prior to or at any time after final completion of all the Work, provided that any such claim, damage, loss, causes of actions or suits, or expense is caused in whole or in part by any action and/or inaction of, or any breach of any provision of the Contract by the Contractor and/or any of the Subcontractors, and/or anyone for whose act any of them may be or may be construed to be liable, regardless of whether or not such action, inaction and/or breach is caused in part by a party or parties indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right of indemnity which would otherwise exist for the Bank, and shall survive indefinitely beyond final completion of all the Work, beyond the expiration or earlier termination of the Contract, and/or beyond the termination of the Contractor’s and/or any Subcontractor’s right to proceed with provision of the Work.

In any and all claims against the Bank and/or any other of the indemnities by the Contractor, any of the Subcontractors, or any party for whose acts any of them may be liable, or may be construed to be liable, the indemnification obligations of the Contractor under this Subparagraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, and/or any Subcontractors, under workers’ compensation acts, disability benefit acts, or any other employee benefits acts.

Construction Manager: _____ Date:
Owner: _____ Date:

The indemnification obligations of the Contractor specified in this Subparagraph shall be an indemnification for professional wrongful acts and errors and omissions of the Contractor committed while advising the Bank on environmental matters and other professional matters in connection with the Contract.

The indemnification obligations of the Contractor under this Subparagraph shall in no way be limited by the penal sum of any performance bond.

The indemnification obligations of the Contractor under this Subparagraph shall extend to the liability of the Bank, or any of its agents, consultants, or employees, respecting any injury and/or damage arising out of or resulting from the preparation or approval of any maps, plans, drawings, schedules, opinions, reports, surveys, designs, specifications, any elements of the Contract Documents, Applications for Payment, Submittals, and/or any certifications of Substantial Completion or Final Completion, or arising out of or resulting from the Bank’s, or any of its agents, consultants, or employees, giving or failing to give directions or instructions, to the extent empowered under the Contract Documents, unless such giving or failing to give directions or instructions is the sole cause of any such injury and/or damage.

No cost or expense paid or incurred for which the Contractor is responsible or liable under this Subparagraph or under any other indemnification provided under any of the Contract Documents, shall be considered as a part of the Contract Sum. The requirements of this Subparagraph shall survive indefinitely beyond final completion of all the Work, beyond the expiration or earlier termination of the Contract, and/or beyond the termination of the Contractor’s, and/or any Subcontractor’s, right to proceed with his provision of the Work.

In Subparagraph 4.3.2, lines 5 and 11, delete the words “arbitration or.”

In Subparagraph 4.3.4, line 2, delete the words: “including arbitration.”

4.4 Resolution of Claims and Disputes

In Subparagraph 4.4.4, line 6, delete the words “but subject to arbitration.”

4.5 Arbitration

Delete Paragraph 4.5 in its entirety.

ARTICLE 7; CHANGES IN THE WORK

Add the following to the end of Subparagraph 7.1.3:

At the request of the Architect, the Contractor shall promptly prepare and submit, to the Architect, a cost estimate for any changes or proposed changes in the work and any contract time adjustment required by this change. This estimate shall include an itemized listing of

Construction Manager: _____ Date:
Owner: _____ Date:

quantities and cost associated with the changes of work and shall be limited to those elements listed in Articles 7.3.6.1., 7.3.6.2., 7.3.6.3, 7.3.6.4, as amended.

In the last line of Subparagraph 7.1.4 delete “or Contractor.”

Add the following Subparagraph 7.1.5

Any substitutions for specified materials, equipment, or systems proposed by or through the Contractor shall be effected only upon approval and authorization by the Owner and Architect through the issuance of a Change Order. Upon such issuance, the substitution shall become part of the Contract Documents as if specifically incorporated therein by the Architect or its consultants.

7.3 Construction Change Directives

Add the following clauses to Subparagraph 7.3.6:

.1 **MARKUP ON ADDITIONAL WORK**

Subcontractors and Subordinate Subcontractors shall be limited to, and agree to perform, any additional work which may be ordered in accordance with the General Conditions of the Contract for the net cost of materials and labor (including wages paid, Sales and Use Taxes, Payroll Taxes Workers’ Compensation and all of the insurance) plus the following percentage of this amount for all their overhead and profit:

- a) 15 % (**fifteen percent**) on additional work and supervision performed by the direct forces of the Subcontractor in question.
- b) 10 % (**ten percent**) on work performed by a trade contractor subordinate to the Subcontractor in question.

.2 The percentage to be added for any work change involving both added work and omitted work shall be applied to the net difference in cost.

.3 The percentage fees as indicated herein shall also apply to Subparagraph 7.3.3.

.4 Nothing in this Article shall excuse the Contractor from proceeding with the extra Work as directed by the Owner.

Construction Manager: _____ Date: _____
Owner: _____ Date: _____

ARTICLE 8; TIME

8.2 Progress and Completion

Add a new Subparagraph 8.2.2.1:

Meetings shall be held periodically as requested by the Architect, at a designated place in the Building, at which time representatives of the Contractor shall be present to discuss all details relative to the progress of the Work. The Contractor shall arrange for and conduct these meetings, shall record the proceedings, and shall furnish one (1) typed copy of the minutes of such meetings to the Owner and Architect.

ARTICLE 9; PAYMENTS AND COMPLETION

9.3 Applications for Payment

In Subparagraph 9.3.1, line 1, delete “ten” and insert in its place “fifteen.”

Add the following to the end of Subparagraph 9.3.1:

Each item listed in the application for payment shall have a separate amount for labor and a separate amount for material and other costs.

Add the following Clause 9.3.1.3 to 9.3.1:

9.3.1.3 Until the Work is certified by the Architect to be substantially completed, the Owner shall pay ninety percent (90%) of the amount due the Contractor on account of progress payments. When the work under the contract has been substantially completed, and certified by the Architect, the Owner may pay to the Contractor such additional amount on account of the Work as shall be necessary to bring the aggregate of all payments made by the Owner to the Contractor to an amount equal to ninety-five percent (95%) of the contract sum. The Owner may reinstate or alter retention at any time and at any percentage. The Owner may make payment, at its discretion, for each Application for Payment in the form of separate checks for the Contractor and for each of the Subcontractors in the amount shown for those trades in the application, and as certified payable by the Architect’s Certificate for Payment. Checks for Subcontractors shall be made payable jointly to the Contractor and the Subcontractor. All such checks shall be given to the Contractor for his distribution to the Subcontractors.

Delete Subparagraph 9.3.3 and replace with the following:

The Contractor represents and warrants that title to all Work, including, without limitation, supplies, materials and equipment, whether incorporated in the Project or not, will pass to the

Construction Manager: _____ Date: _____
Owner: _____ Date: _____

Owner upon delivery to the Site, free and clear of all chattel mortgages, conditional sales agreements, security interests, financing statements and any other liens, claims, or encumbrances, all of which are hereafter referred to in this Article 9 as a “lien” or “liens”; and that no Work, including without limitation, supplies, materials or equipment will be acquired subject to any lien or liens.

In Subparagraph 9.7.1, line 6, delete “or awarded by arbitration.”

ARTICLE 10; PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

Delete Subparagraphs 10.1.2, 10.1.3 and 10.1.4 in their entirety and insert the following subparagraphs:

10.1.2 In the event that Contractor encounters asbestos unexpectedly, Contractor agrees that it has full responsibility to protect and to have provided for the safety of his personnel and personnel in the area through adequate precaution, preventative measures and training.

10.1.3 In the event Contractor does encounter asbestos unexpectedly, Contractor shall give prompt written notice to the Owner and Architect and proceed to limit exposure therefrom by, at the option of the Owner, enclosing, containing or encapsulating said asbestos containing material in accord with all applicable industry standards of care and in compliance with all applicable municipal, county, state and Federal laws or regulations. Contractor shall not suspend Work in areas which are appropriately sealed off from the one where the asbestos has been discovered. Contractor shall provide Owner with an estimate of the costs for any additional work resulting from encountering asbestos and Contractor and Owner shall mutually agree on the appropriate compensation for Contractor.

10.2 Safety of Persons and Property

Add the following Clause 10.2.1.4 to subparagraph 10.2.1:

10.2.1.4 The work of the Owner or other separate contractors.

Add the following Subparagraph 10.2.8 to 10.2:

10.2.8 Any special precautions for fire protection necessary for the execution of a Contractor’s Work shall be the responsibility of the Contractor requiring same and the cost of such precautions shall be paid for by that Contractor. The Contractor is in no way relieved of its responsibility to abide by the Occupational Safety Health Act (OSHA) regulations and for recording and registering accidents by the reporting of accidents to the Owner and the Architect.

Construction Manager: _____ Date:
Owner: _____ Date:

ARTICLE 11; INSURANCE AND BONDS

11.1 Contractor’s Liability Insurance

Delete Paragraph 11.1 entirely and substitute:

11.1 The insurance shall be written as set forth in the AIA Document A121/CMc and Document 565, 1991 Edition, as it may be amended by the Rider generated by the Bank for this Project.

11.3 Property Insurance

Delete Paragraph 11.3 entirely and substitute:

11.3 Property Insurance

11.3.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against all risk of physical loss or damage including, theft, vandalism and malicious mischief. If not covered under the all risk insurance, the Contractor shall effect and maintain similar property insurance for portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment under Subparagraph 9.3.2.

11.3.2 The insurance coverage should include the cost of repair and consequential damages.

11.3.3 The Contractor shall file a copy of all policies with the Owner before an exposure to loss may occur.

11.3.4 The Owner and Contractor waive all rights against each other and the Subcontractors, Sub-subcontractors, agents and employees each of the other, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 11.3 except such rights as they may have to the proceeds of such insurance held by the Contractor as trustee. The foregoing waiver afforded the Architect, his consultants and agents and employees shall not extend to the liability imposed by Sub-paragraph 3.18.3. The Contractor shall require of the separate Contractors, Subcontractors, and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Subparagraph 11.3.4.

11.3.5 The insurance coverage should be maintained until the Work is installed and accepted by the Owner.

11.3.6 The Owner shall continue to occupy or use a portion or portions of the Work prior to

Construction Manager: _____ Date:
Owner: _____ Date:

Substantial Completion thereof. The Contractor shall insure that the insurance company or companies providing the property insurance have consented to this occupancy and use by endorsement to the policy or policies. The insurance shall not be canceled or lapsed on account of such partial occupancy or use.

Add the following Paragraph 11.5 to Article 11:

11.5 Other Insurance

11.5.1 The Owner shall not be obligated to procure or maintain any form of fire (property), liability, or other insurance.

11.5.2 The Contractor shall furnish a Performance Bond and Labor/Material Bonds covering the faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor’s usual source and the cost thereof shall be included in the Contract Sum.

11.5.2.1 The Contractor shall deliver the required Bonds to the Owner not later than three (3) days following the date the Contract is entered into.

11.5.2.2 The attorney-in-fact who executes the required Bonds on behalf of the Surety shall affix thereto a certified and current copy of the power of attorney.

ARTICLE 12; UNCOVERING AND CORRECTION OF WORK

12.2 Correction of Work

Add the following to the end of Subparagraph 12.2.2:

If, in the judgement of the Owner, any material, equipment or systems require corrective work because of defects in material or workmanship within the one (1) year warranty period or extended warranty periods, the Contractor shall complete all required corrective work within forty-five (45) days of notice. If the Contractor does not in accordance with the terms and provisions of the Contract, complete all corrective work within forty-five (45) days, or comply with and fulfill his warranty obligations, the Owner will, after prior written notice to CM, notify the bonding company to have such work and/or obligations performed at no additional cost to the Owner. The obligations of the Contractor under the terms and provisions of the Contract, shall not, however, be limited to the surety retained by the Owner pursuant to the provisions of the Contract.

ARTICLE 13; MISCELLANEOUS PROVISIONS

13.1 Governing Law

Construction Manager: _____ Date:
Owner: _____ Date:

Delete Paragraph 13.1.1 entirely and substitute:

This Contract and the rights and obligations under this Contract shall be governed by and construed in accordance with the Federal law of the United States of America and, in the absence of controlling Federal law, in accordance with the law of the State of New York, notwithstanding New York's choice of law rules.

Delete Paragraph 13.3.1 entirely and substitute:

Any notice or other communication required or permitted to be given or delivered under this Contract shall be in writing and shall be sufficiently given if delivered personally, which shall be required with regard to notices applicable to a material breach, or sent by telegram or cable, or mailed by first-class or overnight delivery mail, return receipt requested, postage prepaid, as follows:

To Owner:

Federal Reserve Bank of New York
33 Liberty Street
New York, N.Y. 10045

To Contractor:

or to such other address or addresses as either party may from time to time designate to the other by written notice. Any notice shall be deemed to be given when received.

ARTICLE 14; TERMINATION OR SUSPENSION OF THE CONTRACT

Add the following new Subparagraph 14.4:

Article 14.4; Owner's Unrestricted Right to Terminate

14.4 Notwithstanding anything in this Contract to the contrary, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate this Contract at any time at its sole discretion, with or without cause, without liability of any kind. In such event, the Owner shall only be obligated to, pay the Construction Manager any Cost of Construction Manager's Services for services rendered prior to that time and CM's reasonable demobilization costs. Further, the Owner may assume all or some of the subcontracts therefore awarded, if any, and award the performance of the incomplete portions

Construction Manager: _____ Date:
Owner: _____ Date:

of the Construction Manager’s Services to another Construction Manager acceptable to the Owner.

Add the following new Articles:

ARTICLE 15; RECORDS OF THE CONTRACTOR

15.1 Maintenance of Records

15.1.1 The Contractor shall maintain and keep, for a period of at least six (6) years after the date of Final Acceptance, all records and other data relating to the Work. The Owner or the Owner’s representative shall have the right to inspect and audit all records and other data of the Contractor relating to the Work.

ARTICLE 16; DAVIS-BACON ACT

16.1 Davis-Bacon Act

16.1.1 The Contractor and all Subcontractors shall be required to pay all laborers and mechanics employed or working upon the site of the Work the full amount of wage and fringe benefits due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor applicable to the class of work performed at the site of the Work. Although the Reserve Banks have taken the position that they are not legally subject to the Davis-Bacon Act and the implementing regulations, (40 U.S.C. § 276a et seq. and 29 CFR Part 5) this action is taken in recognition of the policy of the Act. The Contractor and all Subcontractors may not rely on the position of the Bank as a defense for noncompliance with the wage requirements of the Davis-Bacon Act.

ARTICLE 17; SMALL AND DISADVANTAGED BUSINESSES

17.1 Small and Disadvantaged Businesses

Owner has a policy of assisting small businesses and disadvantaged small business in participating in the performance of Owner’s contracts. Contractor hereby agrees to carry out this policy in the awarding of subcontracts connected with this Contract to the fullest extent consistent with the efficient performance of this Contract. Contractor further agrees to furnish to Owner information demonstrating Contractor’s compliance with this clause, upon request by Owner.

As used in this Contract, the term “small business” means a business qualifying as a small business concern under Article 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term “disadvantaged small business” means small business--

Construction Manager: _____ Date:
Owner: _____ Date:

- (1) At least 51 percent (51%) owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent (51%) of the stock of the business is owned by one or more socially disadvantaged individuals; and
- (2) whose management and daily business operations are controlled by one or more such individuals. Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and any other minorities, or any other individual found to be disadvantaged by the Small Administration pursuant to Article 8(a) of the Small Business Act.

Contractor, acting in good faith, may rely on written representations by its subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

ARTICLE 18; EQUAL OPPORTUNITY

18.1 Contractor Will Not Discriminate

In the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. The Contractor shall, in all solicitations or advertisement for employees placed by him or on his behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, disability or national origin.

ARTICLE 19; FORCE MAJEURE

19.1 Force Majeure

Neither party shall be liable for its failure or delay in performance of its obligations under this Contract due to strikes, wars, revolutions, fires, floods, explosions, earthquakes, statutes or government regulations, or other causes beyond its control.

ARTICLE 20; JURISDICTION

20.1 Jurisdiction

The exclusive jurisdiction for any legal action or proceeding arising under this Contract shall be brought in the United States District Court for the Southern District of New York, and the parties expressly submit to the jurisdiction of the court.

Construction Manager: _____ Date:
 Owner: _____ Date:

ARTICLE 21; SEVERABILITY

21.1 Severability

If any provision of this Contract is held invalid, illegal, or unenforceable, the remainder of this Contract shall not be affected thereby. If any portion of this Contract is held by a court of competent jurisdiction to conflict with any Federal, State, or local law or regulation, such portion of this Contract is hereby declared to be of such force and effect as is permissible in such jurisdiction.

ARTICLE 22; CONFIDENTIALITY

22.1 No Disclosure of Owner Information

Contractor acknowledges that any information regarding the Owner, including but not limited to, its operation, business practices, or security procedures obtained by Contractor, its agents or employees while performing the Agreement are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner’s prior written consent.

ARTICLE 23; RIGHT OF ENTRY

23.1 Contractor’s Conditional Right of Entry

Any person or persons designated by Contractor but subject to the reasonable approval of the Owner shall have the right to enter the premises of the Owner during the Owner’s business hours and upon notice to the Owner or any other reasonable time agreed to by the Owner and subject to the Owner’s security arrangements (including drug testing and fingerprinting). A security-related denial or restriction of access by Owner either for security reasons shall not constitute a breach of this Contract or affect Owner’s rights or Contractor’s obligations. Owner may conduct security investigations relating to Contractor personnel having access to Owner’s facilities similar to investigations conducted with respect to Owner’s own employees. Owner may require substitution of Contractor agents, employees and representatives for reasons relating to Owner security. It is understood that the person(s) designated by Contractor to have access to the Owner’s premises will be Contractor’s personnel, unless the Owner is notified and agrees to the contrary.

ARTICLE 24; ADVERTISING

24.1 Contractor Shall Not Advertise Owner’s Name

Contractor shall not use the Owner’s name or any adaptation or variation of the Owner’s name in any advertising, promotional material, or other publication, or otherwise publicize or communicate Contractor’s relationship with the Owner, without the Owner’s prior written consent.

Construction Manager: _____ Date: _____
Owner: _____ Date: _____

IN WITNESS WHEREOF, the parties have duly executed this Contract on the dates set forth below:

AGREED:

[SIGNATURE]

[PRINT NAME]

[TITLE]

[DATE]

AGREED:

**FEDERAL RESERVE BANK
OF NEW YORK**

[SIGNATURE]

[PRINT NAME]

[TITLE]

[DATE]

**Federal Reserve Bank of New York
Request For Proposal**



**Architectural / Engineering Services
for the Renovation of Multiple Floors
at 33 Liberty Street**

Building Services Division
09/18/00

65504



Federal Reserve Bank of New York
Building Services Division
Floor by Floor Modernization

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Federal Reserve Bank of New York
Building Services Division
Floor by Floor Modernization

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The attachments to this RFP are given for general informational purposes only and may not be completely accurate in all details. The Offeror should make an appointment to view 33Liberty in order to verify any specific details of the existing building conditions. Preliminary Space Plans for Phase I are attached to describe, in general, the type of construction required, final space plans will be different than the enclosed plans.



Federal Reserve Bank of New York
Building Services Division
Floor by Floor Modernization

Section 1: Introduction

The Federal Reserve Bank of New York, ("the Bank") requests proposals for architectural and engineering ("A/E") services in connection with the complete and/or partial renovations of eight floors (the "Project") at the Bank's Main Building, located at 33 Liberty Street, New York NY 10045 (the "Building"). In general, the Project encompasses the complete renovation of floors 2 and 6; the complete renovation of approximately 75% of the 5th floor and 50% of the 13th floor with the remainder of these floors requiring partial renovations; the complete renovation of small areas of B,C, D and E levels with a partial renovation on the remainder of these floors and will be completed in Three Phases as described in Section 2.1 below. The affected floors will be referred to herein individually as a "Floor" and collectively as the "Floors." The Three Phases described in Section 2.1 will be individually referred to as "Phase I, II, or III" as appropriate or collectively as the "Three Phases." When the Bank contracts for A/E services pursuant to this RFP, the contract will provide that Phase II and Phase III of the Bank will be at the option and sole discretion of the Bank. **The Bank may, after completion of Phase I or Phase II, opt not to continue the contract beyond the Phases already complete.**

This Request for Proposals ("RFP") is intended to supply sufficient information to permit Offerors to prepare and submit formal proposals. This RFP details specifications, outlines the capacity requirements, lists factors that will be considered in selecting one or more of the Offerors, outlines a required response format and specifies contract clauses required by the Bank. **To be responsive, proposals must include all the information specified in the Proposal Format.**

The A/E services desired include architectural, engineering analysis and design as well as administrative services desired for construction and competitive bidding for the Project. These services include, but are not limited to, preparation of contract documents, drawings, and specifications for the Bank to solicit Construction Management ("CM") services to complete the Project. The basis for the agreement between the Bank and the CM will be a modified form of the AIA Document A121/CMc - AIA 565, 1991 edition and a modified form of AIA Document A201, 1987 edition. Respectively the Standard Form of Agreement between Owner and Construction Manager and the General Conditions of the Contract for Construction.

All architectural firms that have been invited by the Bank to participate in this RFP are herein referred to as the "Offeror(s)". Throughout this RFP when describing work that is to take place after the Bank has selected and contracted for the prescribed architectural and engineering services, the selected firm is referred to as the "Successful Offeror" or the "Architect". These terms shall be understood to mean the selected architectural firm and any other engineering firms or consultants that the Architect has



Federal Reserve Bank of New York
 Building Services Division
 Floor by Floor Modernization

contracted with, or is required to employ, in order to provide all services outlined in this RFP. The Architectural and Engineering services required in this RFP and those that will be required by the Successful Offeror to complete the design of the Project are referred to as ("A/E services").

Section 2: Project Background Information

2.1 Project Schedule

Phase	Floor	Space Plans Complete / Start Construction Docs.	Sub. Buyout (Start)	Construction (Start)	Tenant Move-In (Duration)
1	5	09- 30-00	01- 15-01	03-01-01	10-09-01/12-15-01
1	2	09-30-00	01-15-01	03-01-01	10-15-01/12-15-01
1	D	09-30-00	01-15-01	03-01-01	10-15-01/12-15-01
2	6	03-31-01	12-15-01	02-01-02	08-15-02/09-30-02
2	13	03-31-01	12-15-01	02-01-02	08-15-02/09-30-02
2	E	03-31-01	12-15-01	02-01-02	08-15-02/09-30-02
3	B	08-31-01	04-01-03	06-01-03	01-15-04/02-01-04
3	C	08-31-01	04-01-03	07-01-03	01-15-04/02-01-04

The Bank reserves the right, in its sole discretion, to extend the time schedule, as necessary.

2.2 Floor Occupancy Requirements

Phase	Floor	Scope of Renovation	Approx.. Assigned Area	Estimated Occupants	Department Name
I	5	Full Scope Renovation	5,397	20	Planning & Control
		"	10,000	85	Info. Technology
		"	7,498	30	NADCO
		Partial/ceiling demo	9,200	N/A	(5 TH Flr. Comp. Room)
I	2	Full Scope Renovation	10,800	20	Research Support
		"	8,300	40	Public Information



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		"	4,900	20	Wholesale Prod. Info.
		"	7,581	50	Electronic Payments
I	D	Full Scope Renovation	3,600	18	Records Management
		Partial/ceiling demo	2,000	N/A	Technology Storage
		Partial/ceiling demo	4,000	N/A	Corridors
		Partial	9,000	N/A	Misc. Storage (Vault)
		Partial	20,000	N/A	Mech./ Service Space
II	13	Full Scope Renovation	8,500	10	Conference Center
		Full Scope Renovation	8,500	35	General Office Space
		Not In Contract	11,300	N/A	Existing Auditorium
II	6	Full Scope Renovation	6,200	32	Human Resources
		"	3,800	20	Group Support Services
		"	2,000	10	IT Project Office
		"	7,000	30	Network & Data Services
		"	5,200	25	Intl. Risk Management
		"	7,500	30	Electronic Security
II	E	Partial/ceiling demo	4,000	N/A	Corridors
		Full Scope Renovation	1,500	6	Fiscal Services
		Partial/Class-E Only	10,500	N/A	Fiscal Serv. Gold Vault
		Partial	25,000	N/A	Mech./ Storage Space
III	B	Full Scope Renovation	2,500	N/A	Locker Rooms Protection
		Partial/ceiling demo	4,000	N/A	Corridors
		Partial	32,000	N/A	Misc.Storage/MechSpace
III	C	Full Scope Renovation	5,000	20	Fiscal Services
		Full Scope Renovation	2,500	5	Building Services
		Partial/ceiling demo	4,000	N/A	Corridors
		Partial	26,000	N/A	Mech./ Storage Space



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2.3 Special Considerations

2.3.1 Space Planning Drawings

The Bank has independently entered into an agreement with an architectural firm to act as a planning consultant and ascertain office requirements, execute programming and develop detailed space plans for each of the floors under construction (Phase I, II & III). After the planning consultant completes these ("Space Plans"), the Bank will provide them to the Architect. Scheduled time frames for the turnover of these documents are shown in Section 2.1 of this RFP. The Space Plans will include the following:

- a. Dimensional Floor Plans
- b. Electrical/telephone/data Location Plan (dimensioned)
- c. Typical elevations
- d. Wall and finish plans
- e. Furniture Plans
- f. Panel (furniture) location Plans
- g. Task Light Plans

These documents are Space Plans and not construction documents. No engineering work will have been done on these documents prior to them being turned over to the Successful Offeror. Changes may be required to these Space Plans for a number of reasons, including, but not limited to constructability and engineering related issues. The Space Plans will be provided to the Bank on diskette in both AutoCad and Draw Base formats, utilizing the Bank's defined layering scheme. These drawings will be utilized by the Successful Offeror for the basis of the design and construction documents.

2.3.2 Furniture Systems

The Bank will independently contract for the purchase and installation of all furniture and carpet. The furniture and carpet installation will **not** be part of the CM's construction contract. These services will be provided directly to the Bank by vendors of the Bank's choosing. It is important to note that the communication cabling and electrical work for power and lighting for all furniture will be part of the CM's contract.

The Architect shall make all necessary provisions in the construction documents and drawings to allow for the installation of the furniture within scope and timeframe of the construction. The Architect must consider time requirements necessary for these vendors to complete their work during the construction. Generally, the Bank will incorporate a minimum time frame that a CM must allow these vendors to complete their work during construction.



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2.3.3 Communications Consultant

The Bank may require the Architect to enter into an agreement with a Communications Consultant ("CC") for the purpose of generating communications cabling specifications, pull schedules and drawings and shall make payment for these services as a reimbursable or shall provide these documents to the Architect. The Architect shall provide appropriate CAD drawings to the CC, so that they may prepare communications cabling drawings. These drawings and specifications will be incorporated into the construction documents and be included in the CM's scope of work.

The Architect shall work with the CC to coordinate all the necessary drawings and information so that the communications work may be appropriately coordinated and incorporated into the scope of construction. In addition, the Architect must incorporate and design a number of non-cabling communications requirements into the architectural and engineering drawings. These include, but are not limited to, communications conduit and wall boxes, cable tray, in-feed and core drill locations for furniture feeds and floor mounted telephone and data outlets and other similar items.

2.3.4 Asbestos Abatement

The Bank will independently enter into an agreement with an environmental consulting firm to develop abatement specifications and scope documents, provide 3rd party air monitoring services and provide over site during the abatement. This work will be bid to subcontractors by the CM and the Architect shall coordinate all necessary asbestos related work into construction bid documents. The CM will be required to properly coordinate this work into the overall Project. To clarify, the asbestos abatement work will not be part of the scope of work that the Architect will specify, however, the Architect shall specify work that will allow any asbestos abatement to be seamlessly incorporated into demolition and construction phases of work.

2.4 Mandatory Requirements

To be considered responsive, a proposal must satisfy the mandatory requirements identified in this section and in other respects be responsive to the requirements of this RFP. The Bank will not accept alternative proposals.

1. The Offeror shall carry a professional liability insurance of no less than Two Million Dollars (\$2,000,000) per person, per occurrence with an "umbrella" of Two Million dollars (\$2,000,000).
2. The Offeror shall be an architect licensed to practice in the State of New York. Consultants shall also be appropriately licensed professionals.



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2.5 Desirable Features

Although not mandatory, the following features are desirable for the architectural/engineering services. Other things being equal, the Bank will prefer architectural/engineering services that have features that are more desirable.

1. The Offeror shall carry a professional liability insurance of no less than Five Million (\$5,000,000) Dollars per person, per occurrence, with an "umbrella" of Five Million (\$5,000,000) Dollars.

Section 3: Description of Required A/E Services

3.1 General Requirements

The architectural and engineering work will include, but not be limited to, planning, analysis, engineering and architectural design, document preparation, bidding and contract administration, and any other alternatives the Bank may choose in connection with successful completion of all construction work outlined in this RFP.

All the construction must meet the requirements of any authorities having jurisdiction and any design or administrative work required to complete this construction shall be part of the scope of services that are required for this RFP. This may include the design of systems that are not evident on the schematic floor layouts provided by the Bank (ex. Class E tie-ins, speaker strobes, etc.). Items such as proper security work, Class -E upgrades, door access systems, electrical and mechanical riser work, etc., will be required on all floors. The Offeror must ensure that the purchase and installation of these items are incorporated into all relevant contract documents and are included in the Offeror's response for this RFP.

3.2 Pre-design Services

The following pre-design services will be conducted for each of the Three Phases described in Section 2.1:

- For all meetings required prior to the start of Construction for each Phase of the Project, the Architect shall take meeting minutes and the Architect's project manager shall attend all such meetings.
- During the design development stage of each Phase of the Project, the Architect shall conduct site surveys, review existing Bank documents, existing systems, long-range equipment and infrastructure plans, and existing conditions, and become familiar



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with the Building and its systems. This shall be done to the extent required to allow for the Architect to completely incorporate all architectural, mechanical, electrical, plumbing, fire safety system, security, communications and all other Project work and modifications to the Building in accordance with good engineering and building practices and in a manner acceptable to the Bank. The Offeror shall develop a schedule of examinations for review by the Bank.

- Based on this review, the Architect shall make recommendations as to which building systems and architectural features of the Floors can be refurbished or reused to meet operational needs of the Bank.
- The partial renovation of some areas will require various levels of demolition. The level of demolition to these areas will be determined in part by the recommendations of the Architect, the Bank's environmental consultant, and the Bank and be based on the cost and constructability issues.
- Through meetings with the Bank, the Architect shall develop and refine a detailed construction and move-in schedule for the Floors, taking into account the construction phasing and Relocation Logistics detailed in Section 2.1, and working with the Owner *and the CM* to develop a project schedule that incorporates all phases of construction work, any work required by the Owner's vendors and staff relocations required by the Owner.
- The Bank will provide the Architect with the Space Plans, programming information, equipment, and furniture specifications, when available, and other pertinent information. The Architect shall review these Space Plans for compliance with local, state, and federal building codes, and accuracy. Upon completion of this review, the Architect shall submit written recommendations on how to improve the design in terms of cost and constructability. The Architect shall also note any errors, omissions, construction, and engineering conflicts. If any changes are required, the Architect shall review with the Bank and make necessary changes. **Attachment A** shows preliminary layouts that will be utilized for Phase I (**Not actual layouts**).
- The Architect will be required to become familiar with the standard furniture systems of the Bank so that the appropriate design provisions can be made to accommodate the furniture.
- Where the Bank deems necessary, the Offeror will be required to revise Space Plans layouts once for up to 15% of the floors area after these drawings have been turned over to the Architect. These limits on drawing changes are strictly associated with user-related changes and not those required by value engineering items.
- The Architect shall assist the Bank in development of an RFP for Construction Management Services for the entire Project, which RFP shall indicate that the Bank reserves the right to re-bid those CM Services following the completion of Phase I and Phase II – depending on the Bank's satisfaction with the performance of the CM. The Architect shall also solicit bids on behalf of the Bank for these CM Services, shall review, interpret, clarify and respond in writing to any issues raised or to any contract



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document discrepancies noted by bidders or vendors. The Architect shall review all CM submissions, prepare a written evaluation, and make a recommendation to the Bank on selection of an appropriate CM for the Project. The Architect shall also coordinate all CM bidder conferences and conduct such conferences as directed by the Bank.

- After the Bank has selected the successful bidder, the evaluations will be forwarded to the Board of Governors of the Federal Reserve System for approval. The Architect shall review any Board of Governor comments and prepare a response, if required.
- In the event the Bank decides at any point to re-bid the CM Services for the Project, the Architect shall repeat the assistance described in this Section 3.2.

3.3 Pre-Purchase of Equipment and Materials

The Bank intends to pre purchase a number of items for all Three Phases of construction prior to the start of construction for Phase I. The intent is to allow the Bank to standardize its equipment and construction materials through its multi-floor, multi-year renovation process. The Bank intends to bid certain materials to manufactures and get price and delivery commitments for these materials based on the timeframes required for the Bank's long-term construction plans, which includes, at a minimum, all Three Phases of this Project. These materials would then be assigned to the CM during the Project. The items that may be bid in this manner include, but are not limited to, the following:

- a. Office fronts
- b. Light fixtures
- c. Ceiling Systems
- d. Electrical Panels & Switch Boards

The Architect will be required to develop independent specifications and a set of bid documents for each of these materials or equipment. The Architect will be required to review the submissions and make a recommendation on the best vendor's bid. The criteria for review may include cost, quality, architectural features, maintenance requirements, etc.

3.4 Design Development

3.4.1 Architectural Design Requirements

The scope of Architectural design services include, but are not limited to: Preparation of architectural details, plans, schedules for interior walls, doors, hardware, flooring, ceilings, lighting, millwork, carpeting, bank security systems, etc. The Architect



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will prepare these details based on applied finishes specified by the Space Planning Department of the Bank.

3.4.2 Electrical Design Requirements

The scope of electrical design services include, but are not limited to, the following:

- Examining the Building's existing equipment and overall electrical distribution system ("Electrical System") which includes the Building's main service switchboards, distribution panels, lighting panels and power panels, etc. Design of all electrical distribution required to meet the operational requirements.
- Design of all branch circuiting and for specialty areas, i.e. training rooms, computer rooms, server rooms, conference rooms, training rooms and audio visual ("AV") viewing rooms, etc. Design of electrical systems required to support other equipment and controls.
- The Architect shall be responsible for verifying the location and dimensions of power and data wall outlets, cable in-feeds for proper distribution throughout the floor, in floor cells and within the furniture systems.
This will include field verification of existing underfloor electrical - data raceway parameters.
- The Architect shall specify furniture systems power requirements, core drill, floor and wall box requirements, conduits for infeeding power and communications and any other structural or architectural construction necessary for a complete installation of the furniture systems.
- Communications / Electrical: A/E services shall include the design of cable management and communications related requirements that shall be incorporated into the construction documents. These shall include, but not be limited to, cable tray, grounding systems, conduit runs and drops, locating core drills for underfloor duct feeds, pull boxes, wiremold for special service and computer rooms.
- Security / Electrical : The scope of A/E services will include the incorporation of the Bank's security camera, alarm and card access system into the design documents for installation under the construction project. The Bank will provide card access system specifications, Bank standard wiring schematics and hardware configurations.

3.4.3 Heating, Ventilation, Air Condition ("HVAC")

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The scope of HVAC design services include, but are not limited to, the following items:

- Development of a complete floor HVAC system, including any necessary supplemental systems required to ventilate specialty areas.
- The Architect shall review the Bank's equipment standards for HVAC systems, evaluate the specifications, and make recommendations on improvement. The Architect shall also review for compatibility for the Floor being served and, if necessary, make modifications to the standard in order to meet operational requirements of each Floor.
- The Architect shall generate load calculations of internal and external loads based on each of the Space Plans, equipment loads, and the latest ASHRAE standards to determine each floor's cooling requirements.
- The Architect shall specify a complete control system including all Building Management System ("BMS") requirements. The BMS system has a remote terminal on D-Level. All equipment should be able to be controlled from this area.
- The Architect shall provide a complete design based on the requirements of the Floor to be renovated.

3.4.4 Fire Safety Systems

The scope of A/E services, both full and partial floors, will include design of any and all upgrades of the Building's fire safety system necessary to allow all the Floors to meet New York City, State and Federal Laws and Codes. This will include, but not be limited to, speaker strobe installations, smoke and duct detectors, automatic fire dampers, automatic fan shut down controls, relocation or installation of pull boxes, elevator recall controls, door releases and any other hardware installation required to make all systems operable as per NYC Fire Codes and Ordinances.

3.4.5 Miscellaneous

The scope of A/E services will include, but not be limited to, the design of all other miscellaneous mechanical, electrical or structural systems required for an appropriately designed and complete renovation of all the Floors. All mechanical systems shall adhere to code and authorities having jurisdiction.

3.4.6 CM Pre-Construction Related Design Requirements

Prior to the actual start of construction for each of the Three Phases described in Section 2.1, the CM will be required to perform a number of pre-construction activities.



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These activities include, the development of a construction estimate based on the Architect's design development drawings, review and document value-engineering options and preparation of subcontractor qualifications. The Architect shall work with the CM and the Bank so that the Bank can derive the most benefit from these CM services.

After development of the CM's estimate and review of the value engineering options, the Bank may determine that changes to the specifications and or drawings are required. The Architect shall incorporate any reasonable changes into the construction documents. The Architect shall also review and evaluate sub-contract bid submissions on behalf of the Bank. The Architect shall work closely with the Bank to see that procurement guidelines of the Bank are met and incorporated into the CM bid documents and contract.

3.5 Construction Document Services

Based on the design development drawings and requirements described to the Architect by the Bank, the Architect shall develop and prepare a complete set of stamped design drawings, stamped construction documents and technical specifications for each Phase of the Project which shall include, but not be limited to, architectural, mechanical, electrical, controls, furniture and equipment layouts, reflected ceiling, cable tray, millwork, plumbing, and structural drawings required to complete the Project as outlined in the above scope of work and in any Attachments to this RFP. These documents will illustrate in detail the requirements for the construction of the Project and all NYC Building Codes and requirements, Fire Department requirements, local, state and federal building codes and regulations of any authorities having jurisdiction.

Other Construction Document Services the Architect shall provide include:

- The Architectural Drawings shall show dimensioned wall and floor outlet locations as well as communication and electric in-feed locations.
- The Architect shall incorporate all other consultants work into the construction documents. These include drawings from those consultants that will be hired by the Architect on an as needed basis. They include the structural engineering drawings, AV drawings, etc.
- The Architect will detail on construction drawings all dimensions required for infeed box or core drill locations required for both electrical wiring and communication cabling access into the furniture.
- The Architect shall prepare complete floor plans from each drawing submitted by the Bank, for review and approval.
- Coordination Drawings for all rooms outfitted with AV equipment:
Design work for AV and training rooms will be on separated coordinated design drawings. These coordinated drawings shall include, at a minimum, the following



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drawings:

- a. Quarter inch scale coordinated architectural and engineering plan showing: all electrical, communications, and AV equipment wiring. It shall also show dimensioned outlet locations for AV, electrical and AV wall and floor boxes. The coordinated drawing shall also show all features of the room including podiums, desks, AV racks, architectural features, lighting controls, etc.
- b. Quarter inch scale coordinated reflected ceiling drawing showing dimensioned architectural, AV and engineering components including: screens, projectors, conduit, electrical box locations and types, lighting, wiring and controls; HVAC component, etc.

Design Milestones:

- In addition to providing the design documentation on both paper and CAD media upon completion, the Architect shall submit progress documents at the fifty percent (50%), seventy-five percent (75%), and ninety percent (90%) completion milestones. At these milestones, the Bank's engineering staff and CM will review and comment on the progress set. The Architect shall make any necessary changes as required by the Bank. At these milestones, the Bank may opt to have the CM develop construction estimates and or prepare a Guaranteed Maximum Price ("GMP").
- The Architect shall maintain a log of addendum and contract changes and at all times maintain a complete, up to date, set of contract drawings with all changes made to the contract prior to and throughout construction, these changes shall be made to the electronic drawing files.
- The Architect shall attend coordination meetings with the Bank's staff and management personnel, as required by the Bank.
- The Architect shall be required to work closely with the CM to structure bid packages and shall generate the bid packages that will be used by the CM to obtain contracts with subcontractors and tradesmen in accordance with standard industry practices.

All design drawings, architectural and engineering, shall be computer generated on a Windows based AutoCAD 12, or greater, software package or a compatible computer drafting system. The Architect shall use the Bank's standard layering system and shall save all drawings in a format that is acceptable to the Bank. No hand drawn engineering or architectural design drawings will be accepted.

3.6 Construction Administration Services

- The Bank expects that the project manager for the Architect will attend all project meetings from the beginning of design development for each Phase of the Project through construction and Project close out and prepare minutes of meetings. The CM will also



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prepare minutes. Special unscheduled meetings may be necessary from time to time.

- Review and approve all shop drawings submitted by the CM and subcontractors selected for this Project. Submit to the Bank a copy of all shop drawings for the Bank's comments and permanent records.
- Issue instruction sheets, bulletins as directed by the Bank and for reasonable requests for additional information by the CM. All bulletins and instruction sheets must be accompanied by the Architect stating the sections of the contract that govern the work. **Consultation with and explicit written approval by the Bank is required prior to any such issuance.**
- The Architect shall review and make recommendations concerning change order requests prior to their approval by the Bank. Bulletins that have the potential to become change orders shall be reviewed by the Bank prior to release to the CM. Consultation with and approval by the Bank is required prior to any such issuance. Review CM applications for payment in detail and make recommendations to the Bank concerning payments.
- Prepare a construction punch list at the end of the Project and monitor its completion by the CM.
- Secure the release of liens and closeout of the Project.

On Site Inspections:

- The **Architect** is required to have the A/E staff assigned to the design phase for a particular Phase of the Project attend weekly construction meetings during construction for that particular Phase. Special unscheduled meetings may be necessary from time to time.
- The A/E design staff assigned to the Project shall perform inspections for quality and progress of the construction, to assure all work conforms to the requirements of the contract documents, to address any problems with the installation of the work, and to coordinate and ensure the design intent of the contract documents. The A/E design staff shall also provide construction observation and submit to the Bank, on a weekly basis, a construction progress report for the Banks review. The report form used shall be one that is developed by the Bank and shall note the areas of the construction documents and specifications that govern the work observed and statement on whether the work is progressing according to the specifications section noted. This weekly report shall review site inspection findings and shall outline any foreseeable problems that may impact the schedule or cost of the overall Project. The report shall detail the progress and quality of material delivered to the site. The Architect shall report on architectural issues and the HVAC and electrical designer shall generate these reports for their disciplines.

Start-up Procedures:

- The electrical and mechanical designers shall develop and submit detailed start-up/test procedures for major mechanical and electrical / control systems. These tests shall be written to report on the operation and performance of the overall system



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and verify that the system as a whole is functioning and that each component of the system is functioning in the correct manner. The Architect shall have the designer of each particular system present during the contractors final testing and turnover of all major mechanical, electrical and fire protection systems. The **Architect** shall prepare follow up reports of each major system start-up.

- The Architect shall require that the CM maintain a project schedule for the duration of the Project.
- The Architect shall review and approve all shop drawings and as-builts submitted to the Bank, copy the Bank on all such drawings and maintain an accurate list of all submissions stating status and dates submitted and approved, etc.
- The Architect shall coordinate all punch list surveys with the CM and the Bank, prepare complete punch lists, and repeat as required to closeout Project.

Section 4: Existing Conditions

NOTE: The following describes in general terms the existing conditions of the Floors planned for renovation. However it does not, nor is it intended, to precisely outline all the specific conditions that exist on each of the Floors.

4.1 Building Information

Floors 2 and 5 are approximately 47,000 gross square feet with approximately 34,000 usable square feet. The 13th floor is 30,000 gross sq. ft. and 20,000 usable sq. ft. The basement levels B, C, D & E are approximately 40,000 gross sq. ft. with much of the area overall space being utilized as storage or mechanical space. (SEE ATTACHMENT A, Existing Floor plans outlining areas of construction)

A typical floor has approximately 70 free standing columns outside the core. Columns are generally on 20' centers. The typical slab to slab height is **79'-14"**. The windows are double hung single pane glass and original to the Building.

All floors have similar core configurations. The core of the Building runs east to west and is located in the center of the Building. The core has sixteen (16) passenger elevators and two (2) freight elevators.

4.2 Miscellaneous Systems

Each floor has two (2) communication equipment and riser closets (Comm. Closets) that are located on the east and west ends on the core. These Comm. Closets will remain active throughout construction, be utilized as the starting point for all the new horizontal communications cabling, and will house the network electronics equipment of the floor.



Each floor has a centrally located security closet that houses the Building's security risers (cameras, alarms and card access systems), it will remain and be utilized as the starting point for all security controls and the horizontal security cabling for the floor renovations. Also located within the core are various electrical distribution closets, utility closets, emergency egress stairwells, etc. Adjacent to the core of the Building is the men and women's bathroom. These bathrooms are to remain.

The interior construction is generally terra cotta/plaster, drywall, metal, and glass partitions. The ceilings are a combination of plaster and drop ceilings, acoustical tiles, and decorative steel plate (in basement vaults). The above ground floors are mostly office space with specialty areas that may include, but are not limited to, small computer and equipment rooms, training rooms, etc. Each floor is monitored by the addressable smoke detection system and fire alarm (Class-E) system of the Bank. Each floor has Fire Stand Pipes and sprinkler risers that provide fire suppression coverage for the general office space.

4.3 Existing HVAC Systems

The Floors of the Building are generally fed by 1-3 airside economizer HVAC systems. Not all the mechanical rooms are on the floor being served. The 2nd and 13th floors are fed from the 2nd mezzanine and 15th floor respectively. Each floor has two (2) chilled water risers that provide chilled water via a central chilled water plant. Heating is provided through perimeter steam radiators and fan heating coils. Steam is supplied through a low-pressure central steam distribution, using Con-Edison steam.

The Building's Building Management System (BMS) is a Honeywell system. The BMS server and head end of the Building is located on D-Level. The HVAC controls are a combination of pneumatic and digital. Honeywell controllers are used for both local and remote system controls.

4.4 Existing Electrical Distribution Systems

Each above ground floor (2, 5, & 13) has an electrical system that consists of (5) 208-volt risers that feed various distribution panels. On basement levels (C, D, E), electrical panels are fed by (3) 208-volt risers and a 480-volt riser that runs throughout the Building. 480-volt distribution panels are located on each floor and fed from riser taps that may or may not be on the floors that the panel serves. In addition each floor also has electrical distribution panels that are independently fed from the Bank's Uninterrupted Power System (UPS).



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Section 5: Scope of Construction (General)

5.1 Full Office Renovations (Scope of Work), i.e. Complete ("full scope") Renovation

In general, areas undergoing a full scope renovation will have a complete interior demolition. In general, this includes demolition of existing interior walls, column enclosures, ceilings, lighting, sprinkler systems, fire alarm systems, electrical and communication wiring, ductwork, equipment, etc. It also normally includes varying amounts of asbestos removal, which will be abated during the respective demolition phases of the Project (See Section 2.3.4).

The full scope renovation will include newly constructed office space and will include, all architectural items typically required as part of a complete interior demolition and office renovation including, but not be limited to, the following: new electrical and mechanical equipment and systems; lighting, security devices, communications cable and associated conduit and tray distribution systems, necessary Class-E and BMS system work, Muzak speaker system and construction of special purpose spaces. These special purpose spaces may include areas such as: pantries, kitchenettes, conference and training rooms with AV systems, libraries, receptions areas and any other specialty areas necessary to meet the operational requirements of the Bank. (See additional requirements in Sections 4.3- 4.4 and this Section 5)

5.2 General Scope of Areas undergoing a Limited Scope ("partial") Renovation

Areas designated for partial renovations will have varying degrees of new construction. The level of demolition to these areas will be determined, in part, by the recommendations of the A/E team, the Bank's environmental consultant, and the Bank after considering constructability issues and cost. A number of areas undergoing partial renovation require demolition of ceilings and lighting, particularly in basement corridors and in the 5th floor computer room. However, the majority of areas undergoing partial renovation will require the following basic scope of work: painting; minor electrical and communications branch work; modifications for the installation of new security devices; new and/or upgraded Class-E system devices; a Muzak speaker system; a full floor sprinkler system; new electrical distribution panels; and the renovation of the HVAC systems serving each of these floors. Most of the existing ductwork and horizontal electrical distribution systems are to remain, however, it may become necessary to modify these somewhat. This may include the installation of variable air volume boxes, in-line fans, or some other system modifications.

The renovation of the HVAC systems will include new space temperature controls, equipment controls and the appropriate integration of any old equipment with the new



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equipment and or controls. The HVAC renovation will also require that the new equipment be tied into the Bank's existing Honeywell BMS.

(See additional requirements in Sections 4.3- 4.4 and this Section 5)

5.3 Sprinkler Systems Requirements

Both full and partially renovated areas will be fully sprinkled under this Project. Some basement level areas that house the Bank's emergency generators, main electrical distribution systems, chiller systems, etc. may require a dry pipe system or other means of coverage fire protection coverage. Other basement level areas, where the ceiling is to remain, i.e. vault areas, will have new sprinklers installed below existing ceilings.

5.4 Fire Alarm and Detection Systems Requirements

Both full and partially renovated areas will have installed new ADA compliant audible and visual alarms/ speaker strobes, smoke detectors and any other fire safety system modifications required to bring each floor up to the code. Each floor, at completion, shall meet all applicable NYC Fire Department, National fire code and NYC Department of Buildings codes and requirements.

5.5 Electrical Systems Requirements

In both full and partial renovation areas, all main and sub-distribution electrical panels, both 208 and 480 volt, serving the floor will be replaced. In areas where only partial renovations are planned, the existing horizontal electrical distribution to remain will be brought up to meet code and reconnected to the new panels.

Areas marked for full renovations will require a complete new electrical distribution system including any panel or switch board upgrades and/or additions that are required to meeting the Bank's operational requirements. The new Floors electrical distribution includes feeds to the furniture, furniture task lights, general office areas and equipment, lighting, etc. The upgraded electrical distribution system will also include underfloor raceway system modifications.

5.6 Mechanical HVAC Systems Requirements

In most instances, existing cast iron radiators will remain. Temperature and control valves for these radiators will be replaced, at a minimum, in all areas that are undergoing a complete renovation and in most partially renovated areas.

All existing mechanical rooms serving both the full and partially renovated floors



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All existing mechanical rooms serving both the full and partially renovated floors will be completely replaced or refurbished. This includes all new controls, Class-E tie-ins, etc. Areas that are not being fully renovated will have new controls that will be tied to the new and existing mechanical equipment as required for a complete installation. Any existing ductwork to remain will be reconnected to the new equipment. Necessary area controls to partially renovated areas will also be incorporated into the design. A number of areas on each of the Floors may require HVAC sub-systems. These may include supplemental systems for training rooms, conference rooms, small computer rooms, test rooms, pantries, etc. These systems will also be tied to the Building's BMS.

5.7 Restrooms Requirements

The restrooms of each floor will require little to no architectural or plumbing work, except as required for the installation of Class-E speaker-strobes and the installation of sprinklers. However, they will require painting.

Section 6: Floor Specific Construction Requirements

(This section outlines more specifically some of the construction requirement for each of the Floors undergoing construction. The general construction requirements outlined for full scope renovations and partial scope renovations apply as stated in Section 5 of this RFP).

6.1 Phase 1 Construction

6.1.1 5th Floor Construction: Approximately seventy five percent (75%) of the Floor is to undergo a full scope renovation. The remainder of the Floor is the 5th floor computer room, which will undergo a partial renovation. The scope of work in this, approximate 9000 square foot, area includes: 1) replacement of the drop ceiling, lighting fixtures and ("ansul") fire suppression system, which will be replaced by a pre-action or other dry sprinkler system as determined by the A/E team; 2) the installation of ADA compliant audible and visual fire alarms and smoke detectors; and 3) any necessary tie-in of the existing equipment or services such as ductwork, into the new mechanical or electrical systems. The 5th floor computer room operates 24 hours a day, 7-days a week and will remain active during the construction. The existing computer room air conditioning consists of a satellite chiller plant that provides chilled water to local Liebert units. This supplemental HVAC system will not be modified under this Project, except as required to meet NYC fire code. This system must remain operational 24 hours a day/ 7 days a week during construction.



6.1.2 2nd Floor Construction: Complete full scope office renovation of the entire floor.

6.1.3 D Level Construction: Complete full scope office renovation of approximately 4,000-sq. ft. of area. Partial renovation of the remainder of the floor, which includes approximately 5,000-sq.ft. of corridor and storage area that will have ceilings and lighting demolished and replaced. The remainder of D level work includes all items listed in Section 5. It should be noted that the installation of some of the new sprinklers system will be run below existing steel ceilings in the vault. It is also important to note that much of the D level area houses the Building's electro-mechanical infrastructure. This area may or may not be sprinkled with a wet pipe system. The determination on what type of sprinkler system, if any, is installed in these areas will be determined by the recommendations of the A/E team during the Design Development stage of each Phase of the Project.

6.2 Phase II Construction

6.2.1 13th Floor Construction: The Complete renovation of approximately 19,000 sq.ft. A significant portion of this floor, approximately 11,000 sq. ft., will not be under any type of construction and is outside the scope of this Project.

6.2.2 6th Floor Construction: The complete full scope renovation of the entire floor.

6.2.3 E Level Construction: Includes 38,000 sq. ft. of limited scope renovation with approximately 4,000 sq.ft. of corridor area that will have the ceiling and lighting demolished and replaced. It should be noted that NO sprinkle work will be done in the E level Gold vault. It is also important to note that much of the E level area houses the Building's electro-mechanical infrastructure, this area may or may not be sprinkled with a wet pipe system. The determination on what type of sprinkler system, if any, is installed in these areas will be determined by the recommendations of the A/E team during Design Development stage of each Phase of the Project.

6.3 Phase III Construction

6.3.1 B Level Construction: The complete full scope office renovation of approximately 3,000 sq. ft. of area. Limited scope renovation of the remainder of the 35,000 sq. ft. area, which includes approximately 4,000-sq. ft. of corridor and storage area that will have ceilings and lighting demolished and replaced. The remainder of B level work includes all items listed in Section 5. It should be noted that the installation of some of the new sprinkler system will be run exposed in the warehouse, utility, and storage spaces. It is also important to note that a small portion of B level area houses the Building's electro-mechanical infrastructure, this area may or may not be sprinkled with a wet pipe system. The determination on what



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type of sprinkler system, if any, is installed in these areas will be determined by the recommendations of the A/E team during Design Development stage of each Phase of the Project.

6.3.2 C Level Construction: The complete full scope office renovation of approximately 8,000-sq. ft. of area. Limited scope renovation of the remainder of the 30,000 sq. ft. area which includes approximately 4,000 sq. ft. of corridor and storage area, that will have ceilings and lighting demolished and replaced. The remainder of C level work includes all items listed in Section 5. It should be noted that the installation of some of the new sprinkler system will be run below existing steel ceilings in the vault area and exposed in utility spaces. It is also important to note that a portion of C level area houses the Building's Electro-mechanical infrastructure. This area may or may not be sprinkled with a wet pipe system. The determination on what type of sprinkler system, if any, is installed in these areas will be determined by the recommendations of the A/E team during Design Development stage of each Phase of the Project.

Section 7: Administration of the RFP Process

7.1 Schedule of Events

The following schedule of events shall govern this RFP:

<u>Event</u>	<u>Date</u>
Site Visit	by Appointment
Intent to respond	9/XX/00
Deadline for receipt of questions	9/XX/00
Deadline for Offeror's Proposals	9/XX/00 (2:00PM)
Date of selection of vendor (approximate)	10/XX/00

See Section 2.1 for Additional Scheduling information.

The Bank reserves the right, in its sole discretion, to extend the time schedule, as necessary. Offerors will be notified of any change in the schedule.

7.2 Questions about the RFP

It is the Offeror's responsibility to seek clarification of any inconsistencies, ambiguities, errors, or other issues regarding the RFP that the Offeror does not fully understand. The Bank may respond orally to questions that, in the Bank's view, are about insignificant matters that affect only a single Offeror. Responses to questions that may



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affect Offerors other than the inquirer, however, will be in writing and distributed to all Offerors. Substantive questions about the RFP should be submitted in writing to:

William J. Lennon, Senior Facilities Engineer
Federal Reserve Bank of New York
Building Service Department
33 Liberty Street
New York, NY 10045
(212) 720- 6198

Questions should be submitted by the time specified in the Schedule of Events. No other discussion or communication between an Offeror and an employee or officer of the Bank is permitted and no information gained from any such communication may be considered a binding communication of the Bank.

7.3 Intent to Respond

Each Offeror must submit, by the date specified in the Schedule of Events and to the address specified above for submission of questions, a written statement indicating whether the Offeror intends to submit a proposal responding to this RFP. In addition, the Offeror shall submit, as per Paragraph 7.7 of the RFP, financial reports which will be treated as confidential information, and submitted to the address specified in Section 7.4. Audited financial statements are preferred. The Bank, in its sole discretion, may refuse to consider a proposal submitted by an Offeror that did not submit a timely statement of intent and the audited financial report.

7.4 Submission of Proposals

Each Offeror must submit three (3) copies of its proposal sent via certified mail or hand delivered to:

Mr. Richard Prisco
Building Services Officer, Building Services Department
Federal Reserve Bank of New York
33 Liberty Street New York, N.Y. 10045-0001

to be received no later than 2:00 p.m. on the date specified in the Schedule of Events.

Proposals received after the exact time for submission will not be considered for award unless the Bank determines that the late receipt was due solely to mishandling by the Bank after receipt at the Bank. The only acceptable evidence of the time of receipt is the



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time/date stamp of the Bank on the proposal envelope or other documentary evidence of receipt maintained by the Bank.

Each copy of the proposal must be properly executed and any alterations formally explained and initialed by the Offeror. All three (3) copies must be submitted in a sealed envelope within a sealed envelope. The inner envelope must be clearly labeled "Proposal for Architectural/Engineering Services for the Renovation of Multiple Floors at 33 Liberty Street, DO NOT OPEN." Proposals will not be opened prior to the deadline specified for receipt.

An Offeror, by submitting a proposal, represents that:

- The Offeror has examined and understands the RFP.
- The proposal is based upon the requirements described in the RFP.
- All terms and conditions set forth in the RFP, including all Appendices, Attachments, Exhibits and Addenda are accepted and incorporated in the proposal unless the proposal explicitly takes exception to them.
- The Offeror possesses the technical capabilities, equipment, financial resources and personnel to provide the Architectural/Engineering Services offered by the Offeror.

Because the Bank may select a proposal or reject all proposals without further discussions with Offerors, Offerors should present their proposals initially in the most favorable possible terms from both a technical and price viewpoint.

7.5 Amendment or Withdrawal of the RFP

Corrections or clarifications to the RFP will be issued in the form of written Addenda to the RFP and will be sent by certified or registered mail to all Offerors who have indicated intent to submit a proposal. Receipt of all Addenda should be acknowledged in the proposal. If an Offeror fails to acknowledge receipt of any Addenda, his proposal will nevertheless be construed as though the Addenda had been received and acknowledged. No interpretation, correction, clarification, or amendments to the RFP made by other than written Addenda will be binding on the Bank.

Offerors may modify or withdraw their proposals up to the deadline for submission but not after that time. Proposals may not be withdrawn for One Hundred Fifty (150) days following the deadline for submission.



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7.6 Selection of a Offeror

Upon selection of an Offeror, the Bank will notify all Offerors of the selection. The Bank will indicate in general terms the reason unsuccessful proposals were not accepted.

Selection of an Offeror does not create a contract between the Bank and the selected Offeror(s). The Bank will negotiate a contract with the successful Offeror, which must include the items stated in Attachment D to this RFP. An Offeror to this RFP should specify in its proposal any particular amendments it would propose to the terms stated in **Attachment D**. Merely including a copy of the Offeror's standard contract is unacceptable. If an agreement acceptable to the Bank is not reached within fourteen (14) days of Offeror selection, the Bank reserves the right to disqualify the selected Offeror and reevaluate the remaining proposals.

Under the contract, the successful Offeror will furnish Architectural / Engineering Services as specified in the RFP. The final contract is contingent upon approval by the senior management of this Bank and the concurrence of the Board of Governors of the Federal Reserve System. Absent such approval or concurrence, any award or contract may be canceled without liability on the part of the Bank.

7.7 Determination of Responsibility

The Bank will only select an Offeror that is deemed responsible, in the sole discretion of the Bank. The Bank makes its determination of responsibility based on the following factors, judged as of the time of Offeror selection and the date specified for the start of contract performance:

- a. Ability to comply with all required or proposed performance schedules, taking into consideration all existing business commitments;
- b. Record of satisfactory performance with any entity of the Federal Reserve System or other entities;
- c. Satisfactory record of integrity and business ethics;
- d. Necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- e. Necessary professional personnel, technical equipment and facilities, professional licenses, and operating authority and insurance coverage or the ability to obtain them;
- f. The availability of adequate financial resources to perform the contract; and



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- g. Other qualifications necessary for eligibility to receive an award under applicable laws and regulations.

Where, in the sole judgment of the Bank, a substantial portion of the contract is to be performed by a subcontractor, the Bank will make a similar determination about the responsibility of the subcontractor. The Offeror, of course, remains responsible for the performance of the subcontractor.

The proposal must provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent financial statements, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission. The Bank would prefer the financial statements provided by the Offeror to be audited. If un-audited financial statements are provided, the Bank may conclude that the Offeror is not responsible, even if the financial statements appear to show financial strength. The Offeror should also include other information that it believes demonstrates that the Offeror is responsible. The burden is upon the Offeror to clearly demonstrate that it is responsible. The Bank reserves the right to require such additional information concerning the Offeror's responsibility as the Bank deems necessary.

7.8 Confidential Information

If the Bank receives a request for information from an Offeror regarding the successful proposal, the Bank may disclose bottom-line amounts of an individual Offeror and other information from a proposal to other Offerors or to members of the public after a proposal has been selected. In deciding on disclosure, the Bank will consider whether the Offeror has requested confidentiality and whether disclosure of the information would likely result in substantial competitive harm to the Offeror. If an Offeror wishes to request confidential treatment of certain information, the request must be in writing and submitted with the proposal or amendment containing the information. The request must discuss in detail the justification for the confidential treatment of each item of information for which confidential treatment is requested. This justification must demonstrate that harm would result from the public release of the commercial or financial information; simply stating that the information would result in competitive harm is not sufficient. The Offeror must also state whether the information is available to the public from another source. Information for which confidential treatment is requested must be:

- a. specifically identified in the non-confidential portion of the proposal or amendment (by reference to the confidential portion);
- b. separately bound; and
- c. labeled CONFIDENTIAL.



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7.9 Reservation of Rights

The issuance of this RFP and the Bank's receipt of any information or proposals shall not, in any manner, obligate the Bank to perform any act or otherwise incur any liabilities. The Bank assumes no obligation to reimburse or otherwise compensate any Offeror or recipient of this RFP for losses or expenses incurred in connection with this RFP. The Bank shall have the right to use, for any purpose, any information submitted in connection with this RFP.

The Bank reserves the right: (1) to withdraw the RFP at any time prior to the execution of a contract; (2) to decide not to award a contract to any Offeror; (3) to reject a proposal or award the contract without inviting the Offeror to submit a new proposal; (4) to negotiate with any source considered qualified; (5) to request, orally or in writing, clarification of or additional information concerning proposals that are considered competitive; (6) to waive minor informalities or irregularities, or any requirement of the RFP; (7) to accept any proposal in part or in total; (8) to select a proposal other than the low cost proposal; (9) to engage in a Best and Final offer selection process with selected Offerors which it may choose in its sole discretion; and (10) to reject a proposal that does not conform to the specified format or the other requirements of this RFP.

Prior to any award, the Bank may require the Offeror to submit or identify in writing price data bearing on the reasonableness of the offer. The Bank reserves the right to have its authorized representatives inspect the facilities and examine any books, documents, papers, records, or other data of the Offeror or any supplier that pertain to and involve transactions relating to the proposal, for the purpose of evaluating the accuracy, completeness, and currency of data supplied.

7.10 Small and Disadvantaged Small Businesses

The Bank has a policy of encouraging acquisitions from small businesses and socially and economically disadvantaged small businesses (a "Covered Company"). The term "small business" means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and regulations thereunder. The term "socially and economically disadvantaged small business" has the same meaning as defined in Section 8(a) of the Small Business Act (15 U.S.C. § 637(a)). Socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. If an Offeror believes that it is a Covered Company, it should submit the reasons for this conclusion with its proposal.



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Under the Bank's policy, the Bank gives preference to a proposal from a Covered Company: a responsive proposal from a responsible Covered Company may be preferred over an otherwise comparable proposal even if the proposal from the Covered Company is marginally more costly. The Bank's contract with the Offeror will also require that the contractor follow the policy of the Bank on Covered Companies in awarding any subcontracts.

7.11 Service Contract Act

Under the Service Contract Act of 1965 (41 U.S.C. § 351 et seq. (the "Act")) and the regulations promulgated under the Act (29 C.F.R. Part 4) wages and fringe benefits paid to service employees employed by the Offeror in performing the agreement resulting from this RFP must be not less than the minimum wage and not less than those prevailing in the area where services are performed, or, if a collective bargaining agreement covers the service employees, the wages and fringe benefits must be in accordance with the agreement. The Department of Labor determines the level of wages and fringe benefits to be paid to service employees based on the information on Standard Form 98. The selected Offeror will be required to cooperate fully with the Bank by providing any required information and taking any necessary action to obtain a wage determination or otherwise and will be required to comply with the Act, the Regulations, and any wage determination applicable to the agreement.

Section 8: Evaluation of Proposals

8.1 Objective

The objective of the Bank in soliciting and evaluating proposals for this Project is to ensure the selection of an Offeror to provide A/E services for the multi-floor renovation construction, including planning, analysis, design, construction administration services, inspecting services, etc.

The result of the process will be the selection of the proposal that, in the view of the Bank, is most advantageous to the Bank and offers the optimum combination of experience, project management approach and price.

8.2 Evaluation Process

Only proposals that are received from Offerors that the Bank has determined to be responsible under Section 7.7 of this document will be considered for award.



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All proposals of responsible Offerors will be examined to determine responsiveness to the requirements of the Bank. To be considered responsive, a proposal should satisfy the mandatory requirements and otherwise be responsive to the Bank's other requirements. A proposal that is not responsive may be set aside. If, after evaluation of the remaining proposals, the Bank determines that none of the proposals are responsive, the proposals set aside, at the Bank's option, may be reexamined. Before evaluating the proposals, the Bank may interview one or more Offerors. Prior to evaluating the proposals, the Bank may ask one or more Offerors to arrange an inspection tour of their primary place of business and recently completed projects of similar profile.

The remaining proposals will be further evaluated on the basis of the evaluation criteria in Section 8.3, which are listed in descending order of relative importance.

The Bank has a policy of assisting "Covered Companies" as described in Section 7.10 of this RFP. Under that policy, preference in selecting a proposal may be given to a proposal submitted by a Covered Company. In addition, the subcontracting plan submitted with the proposal will be judged based on plans for using Covered Companies and procedures for documenting compliance with the plan.

8.3 Evaluation Criteria

Responsive proposals will be evaluated on the basis of the following nonexclusive list of criteria. Criteria categories are listed in descending order of relative importance. Where one of the criteria for determining responsibility is repeated here, in this phase of the evaluation, the criterion will be analyzed in terms of the quality with which or the extent to which the criterion is demonstrated.

8.3.1 Technical Ability / Experience of Project Team

The ability of the Offeror to furnish a high level of architectural, engineering and construction administration expertise. Specifically, the Bank seeks Offerors with demonstrated experience in fast track multi-floor interior renovation projects, which include significant mechanical, electrical, and fire alarm systems system upgrades.

A major consideration will be the Offeror's ability to appropriately staff the Project with professional personnel with strong design, construction administration skills, and substantial experience in similar work. The Bank will also consider the Offeror's experience and expertise in maximizing the advantages of a CM administered project.



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The staffing outline suggested by the Bank is as follows (assume Staffing Requirements for Phase I & II):

1. Project Manager / Designer: Architectural Discipline
2. Project Manager/ Designer: Engineering Discipline
3. Designer: Architectural Discipline
4. Designer: Engineering Discipline
5. Principal: Engineering Firm
6. Principal: Architectural Firm

8.3.2 Project Management Approach (Assume Staffing Requirements for Phase I & II)

This criteria will include an evaluation of the Offeror's overall approach to the Project, including strategies for quality control, meeting Project milestones, coordination among other contractors, consultants, etc . . . , and dealing with any significant considerations identified by the Offeror. The Offeror should provide a brief description of the Offeror's organization and project approach. The Offeror should also provide copies of standard forms including, but not limited to, the following:

- Project Budget
- Project Schedule
- Change Orders
- Request for Information
- Requisition

(Note: The Bank may require the use of its own standard forms.)

8.3.3 Cost

This criteria will include a comparison of the Offeror's cost proposal with those of other Offerors and an evaluation of the extent to which the Offeror's cost proposal is most advantageous to the Bank. Each Offeror must submit three (3) separate unit costs (per construction phase) for the services outlined in this RFP. The Offeror shall submit a Lump Sum Fee for each of the Three Phases of the Project. The first, second and third Lump Sum Fees proposed shall be for the scope of services outlined in the RFP for Phase I, Phase II and Phase III scope of construction, respectively. In addition, each Offeror shall provide a separate unit cost (per construction phase) for any and all additional services that may be required in the event the Bank fails to renew the CM's contract for Phase II or III construction and obtains the services of a different CM for these phases.



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Proposed fees are to be included as set forth in the Proposal Format indicated in Attachment A. Fees indicated in a format other than indicated in Attachment A may be considered unresponsive.

The Owner expects that the percentages given for the Construction Manager's General Conditions and Fee are completely inclusive of any and all compensation required by the Construction Manager to cover all of the Construction Manager's costs associated with completion of the construction, the Work and all costs associated with the Construction Manager's performance of services required by the Contract.

The Owner, as per the Contract, may convert the method for compensation to the Construction Manager for Construction Phase services to a Lump Sum Contract based on an amount equal to the agreed upon to GMP.

All Offerors are hereby advised that Federal Reserve Bank of New York is exempt from all the local and state taxes.

8.3.4 Subcontracting Plan

The existence of a plan by the Offeror to use Covered Companies in accordance with the Bank's policy and on the proposed procedures for documenting compliance with the plan as described in Section 7.10 of the RFP.

8.3.4 Contract Terms

Whether the contract terms or amendments proposed by the Offeror are significantly less advantageous to the Bank than the terms specified in the RFP.

Because proposed contract terms are a part of the evaluation process, the only contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal. Acceptance of an Offeror's proposal does not bind the Bank to accept the contract changes proposed by that Offeror.



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Attachment A

**Federal Reserve Bank of New York
Request For Proposals
for Architectural/Engineering Services
for the Renovation of Multiple Floors
at 33 Liberty Street**

Proposal Format

This attachment specifies the format that should be used to prepare proposals responding to this RFP. The sole purpose of this format is to facilitate the fair and equitable evaluation of all proposals received. At its option, the Bank may consider any significant deviation from this format as non-responsive and disqualify that proposal. Extensive cross-referencing to other documents may be considered non-responsive. Responses should be short and to the point.

The typical format of all proposals should be as follows:

I. Technical Ability, Resources and Experience

- a. Provide a brief narrative outlining your firm's history, describe representative projects completed by your firm in the past year and any unique qualifications that might pertain to this Project.
- b. Describe your firm's staffing resources and its ability to deliver the required services in a timely manner. Describe how your firm deals with fluctuating internal workloads and demands.
- c. Provide a brief resume of all staff members who will be assigned to the Project.
- d. For each of the six (6) **(and only six)** key staff members that will be most intimately involved with the Project, the Offeror shall provide a description of two (2) completed projects that each staff member has been intimately involved with and one reference from each of the projects listed for each staff member: Do **NOT** provide a list that includes any principals or senior executives of the firm. List **only** those individuals that will be most directly involved with this Project. Do **NOT** include pictures or



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descriptions of projects that the firm has completed or been associated with, unless they are projects that have been worked on by the staff members assigned to the project and is accompanied with a reference for that staff member.

II. Description of Proposed Project Approach and Staffing

- a. Indicate the quality control mechanisms your firm expects to utilize to insure accuracy of the fieldwork and documents.
- b. State any significant considerations seen as necessary for the successful and timely completion of the Project.
- c. If utilizing an outside firm for engineering services, state the methods that would be utilized by your firm to ensure seamless coordination and communications during the many stages of design and construction.
- d. Provide a Project Schedule in tabular form as follows that indicates a recommended schedule for the following tasks to meet all of this RFP's requirements and for each of these tasks indicate the weekly staffing (minimum) hours that the Project staff would be dedicated to each task.

Project Task	Duration	Hours per week of Staff Dedicated to Each Task (Insert staffing)					
		PM Architect	Designer Architect	Architect	PM Engineer	Designer Engineer	Engineer
Pre-design Services							
Design development							
Procurement of CM services							
Start of CM Pre-construction Services and Value engineering							
Completion of Construction Documents							
Construction (Administrative Staffing)							



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Construction (Field Inspection Staffing)							
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- e. The Offeror shall suggest strategies on how the Offeror plans to meet the Project milestones. List any considerations the Offeror sees as necessary for the successful and timely completion of the Project.
- f. For each person assigned to the Project, Offeror shall list the minimum number of man hours and discipline of that staff member that would perform the on-site over-site work for the Project. Hours stated should be appropriate to the overall scope of work and the Offeror's view of on-site inspection required.
- g. The Offeror shall submit a schedule on a weekly basis for the number of man-hours each person assigned to the Project will be on-site to review and inspect the work during construction, excluding demolition. The man-hours specified in this section are for inspection and verification that the contractor is adhering to the designs as specified on the construction documents during the actual construction of the work. The Offeror will be required to meet these minimum requirements under the base Lump Sum Fee for A/E services.

III. Cost

- The Offeror shall provide three (3) separate fees in the tabular form below. These fees shall include the overall cost to the Bank of the services furnished under a Lump Sum Fee agreement and estimated cost of services not covered under a Lump Sum Fee agreement, i.e. Hourly Costs. This includes fees paid to the Offeror and other costs incurred by the Bank, such as reimbursable expenses. **Manpower proposed for on-site over-site and inspection during the actual construction of the Project should be included as part of the Offeror's base Lump Sum Fee proposal.**

Description of Services	LUMP SUM COST (\$)	Project Staff	HOURLY RATE (\$ / hr.)
PHASE I SERVICES			
PHASE II SERVICES			
PHASE III SERVICES			
Cost associated with CM change for Phase II or III Construction			



Additional Insurance Coverage			
List Itemized Reimbursable Expenses:			

- The Offeror shall list the hourly rates for the personnel scheduled to participate in the Project and shall include, Direct Expenses, Overhead and Profit.
- If the Offeror intends to provide the additional insurance coverage as described in section 2.3.6 of the RFP, the cost of the policy should be itemized.
- The Offeror shall also itemize the reimbursable expenses and mark-up on same (if any).
- **The statement of costs by the Offeror should be exclusive of taxes from which the Bank is exempt.**
- Offeror is to provide a statement of expected reimbursable expenses. CAD plotting time and drafting time **must** be included in the Lump Sum Fees for each Phase of the Project. Do not list as reimbursable expense.

IV. Financial Background and Responsibility

The Offeror should provide financial information about the Offeror and any affiliated company upon which the financial strength of the Offeror depends, including the most recent financial statement, the last two annual reports, and, if applicable, the most recent Section 10-K report to the Securities and Exchange Commission.

The Offeror should also include information to demonstrate that the Offeror is "responsible" as described in Section 7.7 of the RFP. This should include examples of similar projects successfully completed, especially for this Bank or other Reserve Banks.

The Offeror should include similar information about any subcontractor that will perform a substantial part of the contract.



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V. Contract Terms

The Offeror should specify any contract terms proposed by the Offeror that differ from any terms specified in this RFP. If the Offeror includes a copy of its standard contract the Offeror should specify which of those terms differ from the terms indicated in the RFP. **Because proposed contract terms are a part of the evaluation process, the only contract changes which the successful Offeror will be permitted to propose after the award is made are those specifically stated in detail in its proposal. Acceptance of an Offeror's proposal does not bind the Bank to accept the contract changes proposed by that Offeror.**

VI. Miscellaneous

The Offeror should include any additional information the Offeror deems useful to the Bank in evaluating its proposal. The Offeror may also request confidential treatment of information in the proposal in accordance with Section 7.8 of the RFP. If the Offeror qualifies as a Covered Company as described in Section 7.10 of the RFP, the Offeror should indicate in this Section and describe the basis for its determination.

The Offeror should include its plan for using Covered Companies as subcontractors as discussed in Section 7.10 of the RFP and any procedures the Offeror will use to document compliance with the plan.

VII. Execution

The proposal should be signed by an authorized representative of the Offeror and include evidence of the authority of the representative.



AIA Document B141

Standard Form of Agreement Between Owner and Architect

1987 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

AGREEMENT

made as of the _____ day of _____ in the year of _____

BETWEEN the Owner:

(Name and address)

and the Architect:

(Name and address)

For the following Project:

(Include detailed description of Project, location, address and scope)

The Owner and Architect agree as set forth below.

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EDITOR'S NOTE

From time to time, the AIA makes minor corrections and clarifications in its documents as they are reprinted. Changes in the 7/88 reprinting of the 1987 edition of B141 were made in Subparagraphs 2.6.1 and 11.3.2. Changes in this 6/92 reprinting were made in Subparagraph 2.6.10 and Paragraph 4.5. See Section C of the Instruction Sheet for a detailed description of these changes.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1

ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

ARTICLE 2

SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program,

schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent shall not be unreasonably withheld.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. *(More extensive site representation may be agreed to as an Additional Service, as described in Paragraph 3.2.)*

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or

quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

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

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

2.6.18 The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

2.6.19 The Architect's decisions on claims, disputes or other matters, including those in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 1.2, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

3.2.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

- .1** inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2** required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3** due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

- 4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.4.5** Providing services relative to future facilities, systems and equipment.
- 3.4.6** Providing services to investigate existing conditions or facilities or to make measured drawings thereof.
- 3.4.7** Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- 3.4.8** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 3.4.9** Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.
- 3.4.10** Providing detailed estimates of Construction Cost.
- 3.4.11** Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.4.12** Providing analyses of owning and operating costs.
- 3.4.13** Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.4.14** Providing services for planning tenant or rental spaces.
- 3.4.15** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.4.16** Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- 3.4.17** Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 3.4.18** Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.
- 3.4.19** Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.
- 3.4.20** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4
OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.6 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.

4.7 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.11 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;

- .3 if the Project is abandoned, terminate in accordance with Paragraph 8.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6

USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The Architect's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

ARTICLE 7

ARBITRATION

7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

7.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

7.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement.

pt by written consent containing a specific reference to this Agreement signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

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

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

8.5 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7.

8.7 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

- 1** Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the predesign, site analysis, or Schematic Design Phases; or

- 2** Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or
- 3** Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner and Architect each shall require similar waivers from their contractors, consultants and agents.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

9.6 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

9.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of

the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project.

ARTICLE 10

PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

10.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

10.2.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

10.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

10.2.1.4 Expense of renderings, models and mock ups requested by the Owner.

10.2.1.5 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.

10.2.1.6 Expense of computer-aided design and drafting equipment time when used in connection with the Project.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.

10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 AN INITIAL PAYMENT of _____ Dollars (\$ _____) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

(Insert additional phases as appropriate.)

Schematic Design Phase:	percent (%)
Design Development Phase:	percent (%)
Construction Documents Phase:	percent (%)
Bidding or Negotiation Phase:	percent (%)
Construction Phase:	percent (%)
<hr/>	
Total Basic Compensation:	one hundred percent (100%)

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows:

11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of () times the amounts billed to the Architect for such services.

(Identify specific types of consultants in Article 12, if required.)

11.4 REIMBURSABLE EXPENSES

11.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of () times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project

11.5 ADDITIONAL PROVISIONS

11.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within () months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2.

11.5.2 Payments are due and payable () days from the date of the Architect's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect.

ARTICLE 12
OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services. Identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)



CAUTION: You should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

Reprinted 8/93

**FEDERAL RESERVE BANK OF NEW YORK
CONTRACT RIDER**

The Standard Form Agreement Between Owner and Architect (AIA Document B141, Fourteenth Edition, 1987) (the "Agreement"), dated _____ between _____ ("Architect") and the Federal Reserve Bank of New York ("Owner" or "Bank") is amended by this Rider as follows. The entire contract between the parties shall consist of the Agreement, any Addendum, and this Rider (the "Contract"). In the event of any inconsistency between the terms of the Agreement and this Rider, the terms of this Rider shall govern.

Article 1, Architect's Responsibilities

After Section 1.1.3 insert the following:

1.1.4. The Architect shall provide professional services for each Phase of the Project (as described in Paragraph 2.1.2 below) in accordance with the terms and conditions of this Contract. **All references to Architect's services in this Contract shall be understood to apply on a Phase by Phase basis.**

Article 2, Scope of Architect's Basic Services

Before Section 2.1.1, add the following new Sections 2.1.0:

2.1.0.1 The Architect shall provide any required services as outlined in Sections 2,3 and 4 of the Owner's Request for Proposals dated September XX, 2000 and its Addendums (collectively the "RFP"). The Architect shall be prepared to provide these architectural / engineering services for the Three Phases of the Project, whether these services are redundant or require additional work. The Architect shall also furnish services indicated as required of the Architect in Article 2 of the "Standard Form of Agreement Between Owner and Construction Manager Where the Construction Manager is also the Constructor" AIA Document A121/CMc and AGC Document 565, 1991 Edition, as may be amended by the Bank, for the Construction Manager's preconstruction work and in "General Conditions of the Contract for Construction", AIA Document 1987 Edition A201 for the Construction Phase of the Project, as may be amended by the Bank.

2.1.0.2 The Architect shall provide detailed planning for the work described above in section 2.1.0.1.

In Section 2.1.1, insert the following in the first sentence after the words "Paragraph 2.2 through 2.6":

“, as customarily required for the administration of a construction project where a Construction Manager is contracted to provide preconstruction and construction services,”

Architect: _____ Owner: _____
Date: _____ Date: _____

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Add the following at the end of Section 2.1.1:

The Architect shall not proceed from Phase to Phase of the Project (as described in Paragraph 2.1.2 below) or the design and development phases within each of the Three Phases until the Owner has approved in writing the work performed by the Architect and the Construction budgets.

Add the following new sections to Article 2.1:

2.1.2. The "Building" means the building located at 33 Liberty Street New York, New York 10045. The ("Floors") mean floors 2,5,6,13 and levels B,C, D and E located in the Building.

2.1.3. "Project" means the renovation and adaptation of the Building and Floors to meet the operational requirements of the Bank. The renovation and adaptation of the Building and Floors shall include, but not be limited to, the work specified in the RFP. The Project will be completed in three phases as described in Section 2.1 of the RFP. The affected floors will be referred to herein individually as a "Floor" and collectively as the "Floors." The Three Phases described in Section 2.1 of the RFP will be individually referred to herein as a "Phase" or as "Phase I, II, or III" as appropriate, or collectively as the "Three Phases." Without limiting the foregoing, the Project shall include, but not be limited to, the following:

Planning, analysis, engineering and architectural design, document preparation, bidding and contract administration, and any other alternatives the Bank may choose in connection with successful completion of all construction work. The complete renovation of floors 2 and 6; the complete renovation of approximately 75% of the 5th floor and 50% of the 13th floor with the remainder of these floors requiring partial renovations; the complete renovation of small areas of B,C,D and E levels with a partial renovation on the remainder of these floors. Areas undergoing a full scope renovation will have a complete interior demolition. In general, this includes demolition of existing interior walls, column enclosures, ceilings, lighting, sprinkler systems, fire alarm systems, electrical and communication wiring, ductwork, equipment, etc. It also normally includes varying amounts of asbestos removal, which will be abated during the demolition phase of construction. Areas designated for partial renovations will have varying degrees of new construction. The level of demolition to these areas will be determined, in part, by the recommendations of the A/E team, the Bank's environmental consultant, and the Bank after considering constructability issues and cost. A number of areas undergoing partial renovation require demolition of ceilings and lighting, particularly in basement corridors and in the 5th floor computer room. However, the majority of areas undergoing partial renovation will require the following basic scope of work: painting; minor electrical and communications branch work; modifications for the installation of new security devices; new and/or upgraded Class-E system devices; a Muzak speaker system; a full floor sprinkler system; new electrical distribution panels; and the renovation of the HVAC systems serving each of these floors. Most of the existing ductwork and horizontal electrical distribution systems are to remain, however, it may become necessary to modify these somewhat. This may include the installation of variable air volume boxes, in-line fans, or some other system modifications.

Architect: _____ Owner: _____
Date: _____ Date: _____

2.1.4. "Owner" or "Bank" means the Federal Reserve Bank of New York, represented by its duly authorized agents.

2.1.5. "Contractor" or "Construction Manager" means the party selected by the Bank to provide construction management services for the Project.

Add the following new sections:

2.2.0.1. For each Phase, the Architect shall review the overall Building's and Floors' power and air-conditioning systems with regard to capacity and compatibility of new systems planned for the modernization of the Floors. Calculations, as required in the Owner's RFP shall be submitted for Owner's review and permanent record. The Architect shall review the Building's existing conditions and make recommendations to the Bank as to any existing facilities or equipment that may be beneficial for the Bank to reuse. The Architect shall review the operational requirements of the Bank, provide a complete and detailed analysis of the standard HVAC equipment specifications of the Bank, and determine if this equipment is appropriate for each of the Floors. If not, the Architect shall design and specify a system, that meets the operational requirements of the Bank.

2.2.0.2. The Owner will provide schematic drawings illustrating the Floors layouts as outlined in the RFP, and specify, purchase and install the furniture and carpet for this Project. The Architect shall provide the architectural details, plans, and schedules for interior walls, doors, hardware, flooring other than carpeting, etc. required for a complete renovation of the Floors. The Architect shall be responsible for providing all mechanical, electrical, structural and other engineering drawings and shall provide the overall coordination and incorporation of the Communications requirements in the documents. The Architect shall be responsible for locating power infeeds and power/datacom distribution within the furniture, including verification and detailing on a CAD drawing all dimensions and field locations of existing under-floor raceways, columns, and all other necessary items. The Owner will furnish, for information only, available drawings of the under-floor raceway system. The Owner will select finishes. The Architect will prepare, on the basis of the Owner's selections, Applied Finish Plans.

2.2.0.3. The Architect shall provide the Owner with a time schedule covering, at a minimum, the schematic design phase, design development phase, construction documents phase, CM and subcontractor bidding and negotiation phases and the construction phase for each Phase of the Project, including a time allowance for the Federal Reserve Board of Governor's review.

2.2.0.4. For each Phase of the Project, the Architect shall conduct a site survey of the relevant Floors. This survey should include a review, and corroboration of the accuracy of available Building drawings, specifications, Space Plans provided by the Planning consultant and any other information furnished by the Owner. It may also include, if necessary, interviewing Owner personnel to determine operational requirements.

Architect: _____ Owner: _____
Date: _____ Date: _____

Add the following new sections following Section 2.2.5:

2.2.5.1. The Architect shall assist the Bank in development of an RFP for Construction Management services for the entire Project, which RFP shall indicate that the Bank reserves the right to re-bid those CM services following completion of Phase I and Phase II – depending on the Bank’s satisfaction with the performance of the CM. In the event the Bank decides at any point to re-bid the CM services for the Project, the Architect shall repeat the assistance described below.

2.2.6 The Architect shall review the Bank’s Rider to the AIA Document A121/CMc “Standard form of Agreement Between Owner and Construction Manager, where the Construction Manager is also The Constructor” and make recommendations for necessary Project specific changes. The Architect shall also review the Bank’s Rider to the AIA Document A201 “General Conditions of the Contract for Construction” and make recommendations for necessary Project specific changes. These documents shall be incorporated, without duplication, into the Architect’s general construction requirements and/or specifications.

2.2.7 The Architect shall make recommendations on the selection of a qualified Construction Managers to bid on the Project’s pre-construction and construction. The Architect shall assist the Owner in soliciting proposals for Construction Managers.

2.2.8 The Architect shall prepare evaluations for bids received by the Bank for Construction Management services and subcontractor bid proposals based on completeness and reasonableness. The Architect shall also assist the Owner in the preparation of all contracts for Construction Manager services and for construction. Bid submissions may be forwarded to the Board of Governors for approval before a contract is signed.

2.2.9 The Architect shall work with the Owner and the Construction Manager to optimize any of the Construction Manager’s preconstruction services provided during the Architect’s “Design Development Phase” of work. This shall include, but not be limited to, review, evaluation and mutual selection of materials and equipment, review and evaluation of Construction Manager construction schedules, budgets, construction phasing schemes and constructibility reviews. The Architect shall also incorporate into the Construction Documents any value engineering options that are recommended by the Construction Manager and accepted by the Bank. Changes required due to value engineering will be included in the base sum contract.

Before Section 2.3.1, add the following new Section 2.3.0:

2.3.0.1 The Architect, at a time determined by the Owner’s request, shall; prepare design development drawings for the Project; submit calculations for electrical, HVAC, sprinkler, lighting, etc. for Owner review and permanent record; submit to the Owner all such documentation on paper, computer disk and/or CAD media; submit to the Owner and/or Construction Manager design development documents for review and, as required, to optimize any preconstruction Services provided by the Construction Manager. The Architect shall attend coordination meetings with Owner’s staff and management personnel as requested by the Owner.

Architect: _____ Owner: _____
Date: _____ Date: _____

2.3.0.2. Following submission of the Architect’s final set of construction documents, the Architect shall attend a review meeting with the Owner staff.

2.3.0.2.1. The Architect shall assist the Owner’s staff in preparation of responses to the Federal Reserve System Board in its review of the design development drawings and construction documents.

Section 2.4.2. In the first sentence delete the words “assist the Owner in the preparation of” and replace with “prepare with the Owner’s input and approval”

Section 2.4.2, at the end thereof insert the following new sentence: “The Owner reserves the right to require that these documents are drafted so that subcontractor bidding meets the competitive procurement guidelines of the Bank.”

After Section 2.4.4. insert the following new sections:

2.4.5 For each Phase of the Project, the Architect shall review and evaluate the Construction Manager’s preliminary and final construction estimates and value engineering recommendations. If necessary, the Architect shall revise documents to the extent necessary to meet the Owner’s Construction Budget.

2.4.6 The Architect shall review the Bank’s agreement with the Construction Manager.

2.4.7 For each Phase of the Project, the Architect shall submit to the Owner construction “progress” documents for its review at fifty percent (50%), seventy-five percent (75%), and ninety percent (90%) completion milestones. The Architect shall attend coordination meetings with Owner’s staff and management personnel as requested by the Owner.

Section 2.5.1. is deleted in its entirety and replaced with the following new sections:

2.5.1. The Architect shall assist the Owner in evaluating the qualification of subcontractors proposed by Construction Manager.

2.5.2. Upon Owner approval of construction documents for each Phase of the Project, the Architect shall assist the Construction Manager in soliciting bids in accordance with the procedures set forth in the AIA Documents and Owner General Terms and Conditions. The Architect shall attend the pre-bid conferences and respond to questions and requests for clarification that the bidders may submit and as requested by the Bank.

2.5.3. The Architect shall attend subcontractor Bid Openings, if requested by the Owner.

2.5.4. The Architect shall assist the Owner in tabulating and evaluating subcontractor construction bid proposals for completeness and reasonableness. The Architect shall submit written recommendations on selection of subcontract bids. Bid submissions may be forwarded to the Board of Governors for approval before a contract is signed.

Architect: _____ Owner: _____
Date: _____ Date: _____

2.5.5. The Architect shall review the Federal Reserve System Board of Governors comments and prepare a response.

Section 2.6.1. Delete entirely and substitute with the following:

2.6.1. The Construction phase of each Phase of the Project shall commence with the agreement of a Guaranteed Maximum Price (“GMP”) with the Construction Manager and/or the award of the Contract for Construction and, together with the Architect’s obligation to provide the Basic Services under this Contract, will terminate when final payment to the Construction Manager is due, or in absence of a final Certificate for Payment or of such due date, sixty (60) days after the Date of Substantial Completion of the Work for that Phase, whichever occurs first.

Section 2.6.2. Insert after “in the edition of” the following: “AIA Document A212/CMC and AGC Document 565, Standard Form of Agreement Between Owner and Construction Manager where Construction Manager is also the Constructor, for the preconstruction phase of the Project and for the construction phase and the”

Section 2.6.2. Insert after “current as of the date of this Agreement,” the following: “as both documents may be amended for this Project.”

Section 2.6.3. Add the following:

Provided, however, the Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect’s Construction Phase responsibility to the extent set forth in written notice to the Architect. The Architect shall no longer bear responsibility unless, until and only to the extent that the Architect shall be redirected to resume responsibility by the Owner. Except with respect to the quasi-judicial authority granted to the Architect herein, the Architect shall not exercise any of its prerogatives or duties in such manner as to increase cost to the Owner of constructing the Project without Owner’s prior written approval.

Add the following immediately after Section 2.6.4:

2.6.4.1. The Architect shall provide qualified and knowledgeable staff to attend weekly progress meetings and generate construction progress reports during the construction phase of the Project. The Architect shall prepare minutes of the meetings. Special unscheduled meetings may be necessary from time to time. The staff assigned to these tasks must be as agreed by the Owner and Architect at the commencement of this Contract.

Add the following after the word “Architect” in the first sentence of Section 2.6.5:

“and engineering staff or engineering subcontractors”

Delete the word “or” after the word “construction” in the first sentence of Section 2.6.5 and replace with the word “and”.

Add the following at the end in Section 2.6.9 “and subcontractors of the Construction Manager”

Architect: _____ Owner: _____
Date: _____ Date: _____

Add the following at the end of Section 2.6.12:

The Architect shall forward to the Owner a copy of all such submittals for the Owner's permanent records.

Section 2.6.19. Delete entirely and replace with the following:

The Architect shall assist with securing the release of liens and close-out for each Phase of the Project, including determination of the Date of Substantial Completion and final completion, review of the written guarantees and related documents and issuance of the final Certificate for Payment. The Architect shall secure all the approvals of authorities having jurisdiction necessary for lawful occupancy.

Add the following immediately after Section 2.6.19:

2.6.20. The Architect shall be required to coordinate work with independent consultants and vendors hired directly by the Bank. These include the furniture and carpet suppliers, the Bank's telecommunications consultant, security vendors, and other contractors.

2.6.21. If required, an agreement, separate from this Contract, will be entered into by the Owner for such services as asbestos abatement design documents and third party air monitoring required by local codes. If required, as an additional service, the Architect will coordinate the efforts of the Bank's environmental consultants and/or asbestos abatement contractors as necessary for the timely completion of the Project.

Article 3, Additional Services

Add the following new section 3.1.2:

In the event any unsafe conditions requiring immediate remedial work are discovered during performance or services of this Contract, the Architect shall furnish Additional Services entailing the following:

- A. Preparation of Construction Documents.
- B. Negotiate a price for a change order to the contract in accordance with the procedures set forth in the AIA documents and the Owner's General Terms and Conditions.
- C. Evaluation of proposal.
- D. Construction administration services including: project site visit on at least weekly basis, attendance at weekly progress meetings and preparation of the minutes and shop drawing review.
- E. Review of contractor's applications for payment and change order requests.

Architect: _____ Owner: _____
Date: _____ Date: _____

Sections 3.4.6. and 3.4.7. Delete entirely.

Article 4, Owner’s Responsibilities

Section 4.3. Delete entirely.

Sections 4.5 through 4.9. Delete entirely.

Section 4.10. Add the following:

Provided, however, this section shall apply only to such knowledge of fault, defect or non-conformance as may be obtained by the Owner’s representative or his designee and the Owner shall have no obligation to investigate for the purpose of becoming aware of fault or defects.

Article 6, Use of Architect’s Drawings, Specifications and Other Documents

Section 6.1. Delete the last sentence thereto and add:

The Owner may also use the Drawings and Specifications with respect to construction, maintenance, repair and modification of the Project.

Article 7, Arbitration

Section 7.1. Delete entirely and substitute with the following:

“At the exclusive option of the Owner, all claims, disputes and other matters in question between the parties to this Contract, arising out of or relating to this Contract or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties agree otherwise. Any and all arbitration arising out of or relating to this Contract shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Contract to the extent necessary to the final resolution of the matter in controversy. The Owner shall include an arbitration and consolidation provision in the Owner-Contractor Contract and shall provide that similar provisions be included in subcontracts and Purchase Orders. This Contract to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Contract shall be specifically enforceable under the prevailing arbitration law.”

Section 7.3. Delete entirely.

Add the following new section immediately after Section 7.4:

Architect: _____ Owner: _____
Date: _____ Date: _____

Section 7.5. At the Owner’s exclusive option, the location for settlement of any and all claims, controversies or disputes arising out of or related to this Contract or any breach thereof whether by arbitration or litigation shall be New York, New York.

Article 8, Termination, Suspension or Abandonment

Section 8.1. Delete “not less than seven days” in line 2.

Section 8.2. Delete “30” immediately after “for more than” in the first sentence and replace with “90”.

Section 8.3. Delete the first sentence and substitute with the following:

Notwithstanding anything in this Contract to the contrary, this Contract may be terminated by the Owner at the completion of each Phase, or at any other time whatsoever, without cause immediately upon written notice to the Architect unless otherwise provided in the notice.

Section 8.3. Delete “90” immediately after “for more than” in the last sentence and replace with “180”.

Section 8.7. Delete everything following the word “termination” in line three and place a period following “termination.”

Article 9, Miscellaneous Provisions

Delete Section 9.1 entirely and substitute with the following:

Unless otherwise specified, this Contract shall be governed by the federal laws of the United States, or in the absence of any applicable federal law, the laws of the State of New York, notwithstanding New York’s choice of law rules.

Section 9.2. Add immediately after “AIA Document A201” the following “and AIA Document A121/CMc and AGC Document 565, Standard Form of Agreement Between Owner and Construction Manager where Construction Manager is also the Constructor”

Section 9.4. Delete in lines 6 and 7 “the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Contract” and insert in its place “the Owner-Construction Manager Agreement to the extent that Agreement is effective.”

Section 9.9. Delete entirely and substitute with the following:

The Architect shall not refer to the Owner or any part of the Federal Reserve System in any publication or advertisement and shall not publicize its role in the Project without the Owner’s prior written consent.

Architect: _____ Owner: _____
Date: _____ Date: _____

Article 10, Payments to the Architect

After Section 10.1.1. insert the following section:

10.1.2. The Architect shall obtain written authorization of the Owner before paying any overtime premium to his employees and agents, where such cost is to be charged as additional fee to the Owner.

Section 10.2.1.6. Delete in its entirety and replace with the following: CAD and drafting equipment time when used in connection with this Project shall be included in the Basic Services and is not a reimbursable expense.

Section 10.5.1. Delete the phrase "Architect has been found to be liable" and replace it with the phrase "Owner determines, in its sole discretion, that the Architect is responsible for."

Section 10.6.1. Insert the following at the end thereof:

"and retained for the period of three years from completion of the Project."

Section 10.6.1. Add the following:

Such records shall be subject to Owner audit upon reasonable notification for the purpose of determining the accuracy of statements submitted.

Article 11, Basis of Compensation

Insert a new Section 11.0 as follows:

"All compensation and payments to the Architect described in this Contract shall be understood to apply on a Phase by Phase basis."

Section 11.2.2. Delete the existing phases and replace them with the following:

Predesign Services:	\$	XX percent (%)
Design Development:	\$	XX percent (%)
CM Bid Docs. & Procurements:	\$	XX percent (%)
Construction Doc. Services:	\$	XX percent (%)
Subcontract Bid/ Award Phase:	\$	XX percent (%)
Construction Administration:	\$	XX percent (%)
Project Closeout	\$	XX percent (%)

Total Basic Compensation:	\$	One-hundred percent (100%)

Architect: _____ Owner: _____
Date: _____ Date: _____

Sec 12.2. INDEMNITY: The Architect shall indemnify and hold harmless the Owner in accordance with the following provisions:

(a) from all loss, cost, expense (including reasonable attorney's fees), liability, injury, damage, or death that may occur or in respect of any party or parties or property including the property of the Owner, to the extent, as determined on a percentage-comparative negligence basis, caused by any negligent act or omission made or done in the course of performance of the services required under this Contract by the Architect, any employee thereof, or any person or entity retained or engaged by the Architect;

(b) from all cost or expense (including reasonable attorney's fees) that the Owner may incur by virtue of any claim by any consultant retained by the Architect for fees or expenses paid to the Architect and not paid to its consultant;

(c) from all loss, cost, expense (including reasonable attorney's fees) or liability that the Owner may incur or suffer as a result of any infringement, on the sole part of the Architect or any person or entity retained or engaged by the Architect, of the patent or copyright laws of the United States for which the Owner is held legally liable; and

(d) the Architect's duties under this Section shall in no event exceed the limits of the Architect's applicable insurance coverage then in force at the time the claim for indemnity is made.

Section 12.3. BUY AMERICAN ACT: The Architect understands that the Owner makes it a policy to comply with the Buy American Act (41 U.S.C. 10(a)-10(d) and Executive Order 10582) as amended. The Architect will use his best efforts to specify materials conforming with this policy.

Section 12.4. EQUAL EMPLOYMENT OPPORTUNITY: In the performance of the Contract, the Architect agrees that with respect to the Work the Architect will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

Section 12.4.2. The Architect shall, in all solicitations or advertisements for employees placed by them or on their behalf for this Project, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

Section 12.4.3. Failure of the Architect to comply with the provisions of the "Equal Employment Opportunity" clause may result in a determination that the Architect is in default. In the event of default on the basis of noncompliance with the provisions of this clause, the Owner shall have the right to terminate the contract, as well as any other rights and remedies provided elsewhere in this Contract in the event of default by the Architect.

Section 12.5. Throughout the course of the Project, the Architect shall prepare a written record of conferences and meetings between the Owner and the Architect showing decisions, approvals, and conclusions made on Project work.

Architect: _____ Owner: _____
Date: _____ Date: _____

Section 12.6. All parties designated by the Architect to maintain liaison with the Owner must be acceptable to the latter and the Architect shall submit the name and professional background of each consultant retained by the Architect to the Owner for approval prior to his participation in the Project.

Section 12.7. The Owner expressly reserves the right to engage, hire, or retain any consultant or consultants to assist in the Project and the Architect agrees to cooperate with these consultants.

Section 12.8. NOTICES: All notices, acknowledgments, confirmations, and other communications contemplated herein shall be reduced in writing by the acting party and shall be effective when placed in the United States mail, postage prepaid, addressed as following:

Architect: XXXX Architect Firm
New York, NY 10000
Attn: XXXXXXXXXXXX
Vice President & Managing Principal

Owner: Federal Reserve Bank
of New York
Attn: Richard Pisco, Building Services Officer
Building Services Department
33 Liberty Street
New York, NY 10045-0001

Section 12.9. TAXES: Notwithstanding any provisions to the contrary, the Owner shall not be billed for or obligated to pay any taxes, including local, State or Federal sales, use or gross receipt taxes, from which the Owner, as a Federal Reserve Bank, is exempt pursuant to Section 7 of the Federal Reserve Act (12 U.S.C. 531).

Section 12.10.1. SMALL BUSINESS AND DISADVANTAGED SMALL BUSINESS: Owner has a policy of assisting small businesses and disadvantaged small businesses in participating in the performance of its contracts.

Section 12.10.2. The Architect agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this Contract. The Architect further agrees to furnish to the Owner information demonstrating the Architect's compliance with this clause, upon request by the Owner.

Section 12.10.3. As used in this Contract, the term "small business" means a business qualifying as a small business concern under Section 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term "disadvantaged small business" means a small business-

(1) at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 percent of the stock of the business is owned by one or more socially disadvantaged individuals; and

Architect: _____ Owner: _____
Date: _____ Date: _____

(2) whose management and daily business operations are controlled by one or more such individuals.

The Architect shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic American, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

Section 12.10.4. The Architect acting in good faith may rely on written representations by subcontractors regarding their status as either a small business or a socially and economically disadvantaged small business.

Section 12.11. SECURITY PROCEDURES AND CONFIDENTIALITY: Architect agrees to comply with all of Owner's security procedures. Architect acknowledges that any information regarding the Owner, including but not limited to, its operations, business practices, or security procedures obtained by the Architect, its agents or employees while performing the Contract are to be treated as confidential and agrees not to disclose any such information and to require its agents and employees not to disclose any such information to a third party without the Owner's prior written consent.

AGREED:

Architect

SIGNATURE

PRINT NAME

TITLE

DATE

AGREED:

**FEDERAL RESERVE BANK OF
NEW YORK**

SIGNATURE

PRINT NAME

TITLE

DATE