

EXHIBIT “1”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SUPERIOR GUNITE,

Index No.:

Plaintiff,

SUMMONS

-against-

YONKERS CONTRACTING COMPANY, INC. and
ZURICH AMERICA INSURANCE COMPANY,

Defendants,
-----X

To the Above Named Defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance on Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates Westchester County as the place of trial. The basis of venue is designated in the contract between the parties.

Dated: New York, New York
March 25, 2013

DUANE MORRIS LLP
Attorneys for Plaintiff

By: 

Mark Canizio, Esq.
1540 Broadway
New York, NY 10036
212-692-1000
MACanizio@duanemorris.com

Defendants' Addresses:

Yonkers Contracting Company, Inc.
969 Midland Avenue
Yonkers, New York 10704

Zurich American Insurance Company
1400 American Lane
Schaumburg, IL 60196

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
SUPERIOR GUNITE,

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY, INC. and
ZURICH AMERICA INSURANCE COMPANY,

Defendants,

-----X

Index No.:

**VERIFIED
COMPLAINT**

Plaintiff, Superior Gunitite, by its attorneys Duane Morris LLP, as and for its verified complaint against defendants Yonkers Contracting Company, Inc. ("Yonkers") and Zurich America Insurance Company ("Zurich"), respectfully alleges as follows:

THE PARTIES

1. At all times relevant herein, Superior Gunitite was and is a corporation organized and existing under the laws of the State of California and authorized to do business in the State of New York, with an office and principal place of business located at 12306 Van Nuys Blvd. Lakeview Terrace, California.
2. Upon information and belief, and at all times relevant herein, Defendant Yonkers was and is a domestic corporation organized and existing under the laws of the State of New York, with its place of business located at 969 Midland Avenue, Yonkers, New York.
3. Upon information and belief, at all times relevant herein, Defendant Zurich was and is a surety company licensed and authorized to conduct business within the State of New York.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST YONKERS

4. Superior Gunitite repeats and reiterates these allegations set forth in paragraphs "1" through "3" hereof.

5. On or about March 3, 2011, Superior Gunitite and Yonkers entered into a certain written subcontract agreement (the "Subcontract") pursuant to which Superior Gunitite agreed, inter alia, to perform certain work in connection with the project known as the Excavation/Mining/Lining of Vertical Shaft, E1, E2 Inclined Tunnels, TI Connector Tunnel, and the Construction of a Ventilation Building and Station Entrance Structure at Site J in New York, New York (the "Project").

6. The Subcontract required Superior Gunitite to provide all labor, materials and equipment necessary for the furnishing, installation and placement of certain shotcrete work at the Project.

7. In consideration for the work, labor, services and materials to be provided by Superior Gunitite, the Subcontract required Yonkers to pay the sum of \$7,500,000, including such other additions or deletions to the work as the parties might agree upon.

8. The Subcontract further provided that the parties could make changes in the work to be performed, and that such changes would be memorialized in change orders adjusting the Subcontract price.

9. Subsequent to March 3, 2011, a series of change orders and other additions were issued by Yonkers to Superior Gunitite, adjusting the Subcontract price to the sum of \$9,149,073, of which only \$5,949,834 has been paid, leaving a balance in the amount of \$3,199,239 no part of which has been paid dispute due demand therefor.

10. Superior Gunitite has fully performed all of its obligations under the Subcontract, except to the extent it was prevented from doing so by the actions or omissions of Yonkers.

11. Yonkers materially breached the Subcontract by failing and refusing to pay Superior Gunitite as required by the Subcontract.

12. The total amount which Superior Gunitite is entitled to be paid for its obligations under the Subcontract is \$9,149,073, of which Yonkers has paid only \$5,949,834, leaving a balance of \$3,199,239, no part of which has been paid despite due demand.

13. As a result of the foregoing, Yonkers is liable to Superior Gunitite in the amount of \$3,199,239, plus interest thereon.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST ZURICH

14. Superior Gunitite repeats and reiterates the allegations set forth in paragraphs "1" through "13" hereof.

15. On or about September 3, 2010, Zurich, as surety, and Yonkers, as principal, signed and executed a payment bond, Bond No. PRF09011946, guaranteeing prompt payment of all monies due to persons furnishing labor, supplies, materials or equipment used in the prosecution of the Project, including the work performed pursuant to the Subcontract between Superior Gunitite and Yonkers (the "Bond"). (A true and complete copy of the Bond is annexed hereto as Exhibit "A").

16. Pursuant to the Subcontract, Superior Gunitite provided certain labor and equipment, and furnished certain materials for the Project.

17. Superior Gunitite fully performed all of its obligations under the Subcontract, except to the extent that its performance was hindered or prevented by the acts and/or omissions

of Yonkers, including Yonkers failure and/or refusal to make payments as required under the Subcontract.

18. On or about January 3, 2013, Superior Gunite notified Zurich and Yonkers, among others, of its claim against the Bond.

19. By virtue of the work performed by Superior Gunite pursuant to the Subcontract, there is currently due and owing to Superior Gunite the sum of \$3,199,239 together with interest thereon, no part of which has been paid by Yonkers or Zurich although duly demanded.

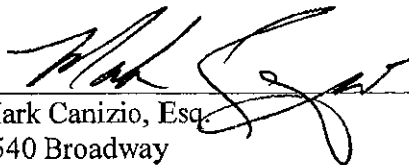
20. By reason of the foregoing, Superior Gunite has been damaged in the sum of \$3,199,239, together with interest thereon.

WHEREFORE, Plaintiff Superior Gunite demands judgment as follows:

1. On the First Cause of Action, against Yonkers in the amount of \$3,199,239, together with interest thereon;
2. On the Second Cause of Action against Zurich in the amount of \$3,199,239 together with interest thereon; and
3. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 25, 2013

DUANE MORRIS LLP
Attorneys for Plaintiff

By: 
Mark Canizio, Esq.
1540 Broadway
New York, NY 10036
212-692-1000
MACanizio@duanemorris.com

To: Yonkers Contracting Company, Inc.
969 Midland Avenue
Yonkers, New York 10704

Zurich American Insurance Company
1400 American Lane
Schaumburg, IL 60196

ATTORNEY VERIFICATION


STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

MARK CANIZIO, an attorney duly admitted to practice law before the Courts of the State of New York, being duly sworn deposes and says:

I am a member of the firm of Duane Morris LLP, attorneys for Superior Gunite, the plaintiff in the within action; I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

This Verification is submitted by me and not by plaintiff, Superior Gunite, for the reason that the plaintiff is not within the county where I have my office and I am familiar with the facts upon which the suit is based.

The grounds of my belief as to all matters not stated upon my knowledge are investigations and reports made to me.


MARK CANIZIO

Sworn to before me this
25th day of March, 2013


NOTARY PUBLIC

MAUREEN MULLEN
Notary Public, State of New York
No. 01MU4830532
Qualified in Queens County
Certificate Filed in New York County
Commission Expires February 28, 2014

EXHIBIT “2”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-----X
SUPERIOR GUNITE

Index No. 54272/2013

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY, INC., and
ZURICH AMERICAN INSURANCE COMPANY,Defendants.
-----XVERIFIED ANSWER,
SEPARATE DEFENSES,
AND COUNTERCLAIM
OF DEFENDANTS
YONKERS CONTRACTING
COMPANY, INC., AND
ZURICH AMERICAN
INSURANCE COMPANY

Yonkers Contracting Company, Inc. ("Yonkers"), and Zurich American Insurance Company ("Zurich") (hereinafter sometimes collectively referred to as "Defendants"), by their attorneys, Veneruso, Curto, Schwartz & Curto, LLP, as and for their answer to the Verified Complaint dated March 25, 2013 of Superior Gunite (hereinafter referred to as "Plaintiff"), answer, allege and say as follows:

1. Upon information and belief, the Defendants admit the allegations set forth in Paragraph 1 of the Verified Complaint.
2. The Defendants admit the allegations set forth in Paragraph 2 of the Verified Complaint.
3. The Defendants admit the allegations set forth in Paragraph 3 of the Verified Complaint, except as to state that the correct name of Defendant is Zurich American Insurance Company.

IN ANSWER TO THE FIRST CAUSE OF ACTION AGAINST YONKERS

4. The Defendants repeat and reassert each and every answer to the allegations of Paragraphs 1 through 3 of the Verified Complaint as if fully set forth at length herein.
5. The Defendants admit that on or around March 3, 2011, Yonkers entered into a subcontract with the Plaintiff ("Subcontract") for certain work relating to Metropolitan Transit

Authority ("MTA") project identified as the Excavation/Mining/Lining of the Vertical Shaft E1, E2, Inclined Tunnels, T1 Connector Tunnel, and the Construction Ventilation Building and Station Entrance Structure at Site J, Contract No.: C-266510, located in at the south side of the intersection of 34th Street and 11th Avenue, in New York, New York (hereinafter the "Project"). The Defendants state that the Subcontract speaks for itself and deny knowledge or information sufficient to form a belief as to all other allegations set forth in Paragraph 5 of the Verified Complaint.

6. The Defendants admit that the Subcontract required Plaintiff to provide labor, materials and equipment necessary for the furnishing, installation and placement of certain shotcrete work at the Project and deny all other allegations set forth in Paragraph 6 of the Verified Complaint.

7. The Defendants admit that the Subcontract price was \$7,500,000, subject to additions and deletions, and state that the Subcontract speaks for itself and deny all other allegations set forth in Paragraph 7 of the Verified Complaint.

8. The Defendants state that the Subcontract speaks for itself and deny knowledge or information sufficient to form a belief as to all other allegations set forth in Paragraph 8 of the Verified Complaint.

9. The Defendants deny the allegations set forth in Paragraph 9 of the Verified Complaint, except as to admit that certain change orders were agreed to by the parties.

10. The Defendants deny the allegations set forth in Paragraph 10 of the Verified Complaint.

11. The Defendants deny the allegations set forth in Paragraph 11 of the Verified Complaint.

12. The Defendants deny the allegations set forth in Paragraph 12 of the Verified Complaint.

13. The Defendants deny the allegations set forth in Paragraph 13 of the Verified Complaint.

IN ANSWER TO THE SECOND CAUSE OF ACTION AGAINST ZURICH

14. The Defendants repeat and reassert each and every answer to the allegations of Paragraphs 1 through 13 of the Verified Complaint as if fully set forth at length herein.

15. Defendants admit that on or about September 3, 2010, Zurich as surety and Yonkers, as principal, executed Payment Bond No. PRF09011946 (the "Bond") relating to the Project pursuant to the Contract between the MTA and Yonkers and Defendants state that the Bond speaks for itself. Defendants state that contrary to the allegations set forth in Paragraph 15 of the Verified Complaint, a copy of the Bond is not annexed to the Verified Complaint. Defendants deny all other allegations set forth in Paragraph 15 of the Verified Complaint.

16. The Defendants deny the allegations set forth in Paragraph 16 of the Verified Complaint except as to specifically admit that Plaintiff was a subcontractor, and did furnish labor and materials, on the Project.

17. Defendants deny the allegations set forth in Paragraph 17 of the Verified Complaint.

18. The Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 18 of the Verified Complaint and leave Plaintiff to its proof.

19. Defendants deny the allegations set forth in Paragraph 19 of the Verified Complaint.

20. Defendants deny the allegations set forth in Paragraph 20 of the Verified Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by failure of conditions precedent.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, to the extent that it seeks payment of sums for work for which the MTA has yet to remit to Yonkers.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the terms of the Contract and/or the Subcontract.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to name and/or properly identify a necessary party to this action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of set-off.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by material breach of contract on the part of Plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of accord and satisfaction.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of waiver.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of laches.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of release.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of estoppel.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has been paid and has accepted all sums due and owing.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's failure to mitigate its damages.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's breach of the implied covenant of good faith and fair dealing.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's asserted claim against the Bond is defective.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the terms and conditions of the Bond.

AS AND FOR A COUNTERCLAIM AGAINST PLAINTIFF
(Breach of Contract)

Defendant Yonkers Contracting Company, Inc., ("Yonkers") as and for its counterclaim against Plaintiff, Superior Gunite ("Superior") states as follows:

1. On or about March 3, 2011, Yonkers entered into a written Subcontract with Plaintiff Superior pursuant to which Superior undertook to perform certain work relating to furnishing labor,

supplies, materials and equipment for certain shotcrete work on the Project for the initial agreed upon price of Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00).

2. Superior failed to timely and sufficiently perform its obligations, services and work and supply all necessary materials under the Subcontract.

3. In order to keep the Project on schedule and to timely finish the work on the Project, Yonkers had to provide material, men and perform and finish various aspects and work within Plaintiff's scope of the Subcontract.

4. Upon information and belief, Plaintiff failed to provide necessary material and equipment on the Project as required by the Subcontract.

5. Upon information and belief, Plaintiff failed to provide sufficient labor and materialmen and material on the Project at various times and thereby caused significant delay in the Project.

6. Upon information and belief, Plaintiff failed to adequately staff and provide supervisory personnel on the Project as required by the Subcontract.

7. Upon information and belief, Plaintiff failed to perform its work in a proper, timely and workmanlike manner, despite due demand.

8. Yonkers fully complied with all aspects of the Subcontract.

9. Plaintiff breached the Subcontract.

10. As a result of Plaintiff's failures of performance and breaches of duty and contract, and pursuant to the terms of the Subcontract, Yonkers performed work and provided labor, material and equipment to the Project to perform the work and services that were within the scope of the Superior Subcontract.

11. In addition to the foregoing and not in limitation thereof, as a result of the actions and

inactions of Plaintiff, Defendant Yonkers incurred damages.

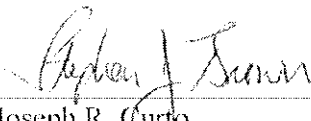
12. As a result of the foregoing, upon information and belief, Defendant Yonkers has been damaged and Plaintiff is liable therefor, for a sum in excess of \$1,700,000.00, the exact amount shall be proven at trial.

WHEREFORE, defendants Yonkers Contracting Company, Inc. and Zurich American Insurance Company demand judgment as follows:

- A. Dismissing the Verified Complaint, together with costs, disbursements and attorneys' fees; and
- B. Dismissing and striking the Plaintiff's claim against the Bond;
- C. Granting judgment in favor of Defendant Yonkers and against Plaintiff Superior on Defendant's Counterclaim, in connection with the breach of Plaintiff of the Subcontract, together with interest, costs and attorneys' fees;
- E. Granting such other and further relief as this Court deems just and proper.

Dated: Yonkers, New York
May 20, 2013

VENERUSO, CURTO, SCHWARTZ
& CURTO, LLP

By: 
Joseph R. Curto
Stephen J. Brown
Attorneys for Defendants
Yonkers Contracting Co., Inc., and Zurich
American Insurance Company
35 East Grassy Sprain Road, Suite 400
Yonkers, New York 10710
(914) 779-1100

To: Mark Canizio, Esq.
Duane Morris LLP
1540 Broadway
New York, New York 10036
Attorneys for Plaintiff

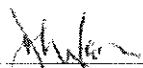
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

JOHN KOLAYA, P.E., being duly sworn, deposes and says:

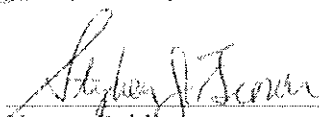
Deponent is the President of Yonkers Contracting, Inc., has read the foregoing Answer, Separate Defenses and Counterclaim and swears that the contents of said Answer, Affirmative Defenses and Counterclaim are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters, deponent believes the same to be true.

That the reason this verification is made by said party is that defendant is not a natural person and deponent is an authorized representative thereof, to wit: its President, and that his knowledge and information above is based upon the books and records of said party.



John Kolaya, President
Yonkers Contracting Company, Inc.

Sworn to before me this
28th day of May, 2013



Notary Public

STEPHEN J. BROWN
Notary Public, State of New York
No. 02BR6168810
Qualified in Westchester County
Commission Expires June 18, 2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SUPERIOR GUNITE

Plaintiff,

Index No. 54272/2013

-against-

YONKERS CONTRACTING COMPANY INC., and
ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

-----X

VERIFIED ANSWER, SEPARATE DEFENSES AND COUNTERCLAIM
OF DEFENDANTS YONKERS CONTRACTING COMPANY, INC.,
AND ZURICH AMERICAN INSURANCE COMPANY

VENERUSO, CURTO, SCHWARTZ & CURTO, LLP
Counsel for Defendants
Yonkers Contracting Co., Inc., and Zurich American Ins. Co.
35 EAST GRASSY SPRAIN ROAD, SUITE 400
YONKERS, NEW YORK 10710
TEL. NO.: (914) 779-1100

EXHIBIT “3”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-----X
SUPERIOR GUNITE,

Index No.: 54272/2013

Plaintiff,

-against-

**VERIFIED REPLY
TO COUNTERCLAIM**YONKERS CONTRACTING COMPANY, INC. and
ZURICH AMERICA INSURANCE COMPANY,Defendants.
-----X

Plaintiff, Superior Gunite, by its attorneys Duane Morris LLP, as and for its Reply to Counterclaim of defendants Yonkers Contracting Company, Inc. ("Yonkers") and Zurich America Insurance Company ("Zurich"), states as follows:

1. Admits that on or about March 3, 2011, Superior Gunite and Yonkers entered into a written subcontract agreement (the "Subcontract") pursuant to which Superior Gunite agreed to perform certain work in connection with the project known as the Excavating/Mining/Lining of Vertical Shaft, E1, E2 Inclined Tunnels, TI Connector Tunnel, and the Construction of a Ventilation Building and Station Entrance Structure at Site J in New York, NY (the "Project"), and denies the truth of the balance of the allegations set forth in paragraph 1 of the Counterclaim. Superior Gunite respectfully requests leave to refer to the Subcontract upon the trial of this action, and incorporates the Subcontract, including all of the drawings, specifications, plans and other documents forming the Subcontract, as if set forth at length herein.

2. Denies the truth of the allegations set forth in paragraphs 2 through 12 of the Counterclaim.

FIRST AFFIRMATIVE DEFENSE TO COUNTERCLAIM

3. The Counterclaim fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE TO COUNTERCLAIM

4. Defendants' Counterclaim is barred due to Yonkers' breach of the terms and conditions of the Subcontract.

THIRD AFFIRMATIVE DEFENSE TO COUNTERCLAIM

5. Defendants are barred from recovery in this proceeding by the doctrines of waiver, estoppel and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE TO COUNTERCLAIM

6. Defendants' failed to provide sufficient notice of delays purportedly caused by plaintiff's inadequate work and/or staff, and failed to provide reasonable opportunity to cure.

FIFTH AFFIRMATIVE DEFENSE TO COUNTERCLAIM

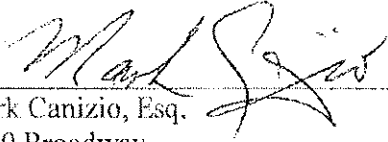
7. Defendants' purported damages are voluntarily incurred, and as such, may not be recovered from the plaintiff.

WHEREFORE, Plaintiff Superior Gunite demands judgment dismissing the Counterclaim of Defendants Yonkers Contracting Company, Inc. and Zurich American Insurance Company, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 10, 2013

DUANE MORRIS LLP
Attorneys for Plaintiff

By: _____


Mark Canizio, Esq.
1540 Broadway
New York, NY 10036
212-692-1000
MACanizio@duanemorris.com

TO: VENERUSO, CURTO, SCHWARTZ & CURTO, LLP
Attorneys for Defendants
35 East Grassy Sprain Road, Suite 400
Yonkers, New York 10710
Attn.: Joseph R. Curto, Esq. / Stephen J. Brown, Esq.

ATTORNEY VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARK CANIZIO, an attorney duly admitted to practice law before the Courts of the State of New York, being duly sworn deposes and says:

I am a member of the firm of Duane Morris LLP, attorneys for Superior Gunite, the plaintiff in the within action; I have read the foregoing Reply and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

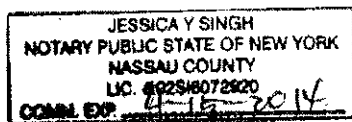
This Verification is submitted by me and not by plaintiff, Superior Gunite, for the reason that the plaintiff is not within the county where I have my office and I am familiar with the facts upon which the suit is based.

The grounds of my belief as to all matters not stated upon my knowledge are investigations and reports made to me.


MARK CANIZIO

Sworn to before me this
10th day of June 2013


NOTARY PUBLIC



AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK

ROSEABEL SCHECK, being duly sworn, deposes and says:

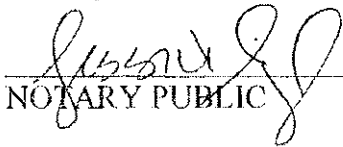
That deponent is not a party to the action, is over 18 years of age, and resides in Cliffside Park, New Jersey. On June 10, 2013, I served the within **VERIFIED** **REPLY TO COUNTERCLAIM** upon:

VENERUSO, CURTO, SCHWARTZ & CURTO, LLP
Attorneys for Defendants
35 East Grassy Sprain Road, Suite 400
Yonkers, New York 10710
Attn.: Joseph R. Curto, Esq. / Stephen J. Brown, Esq.

at the addresses indicated on said service list by electronic mail and by depositing a true copy of same enclosed in postpaid, properly addressed wrappers in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


ROSEABEL SCHECK

Sworn to before me this
10th day of June, 2013


NOTARY PUBLIC

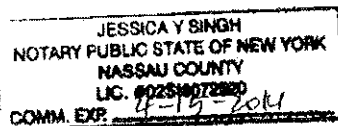


EXHIBIT “4”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SUPERIOR GUNITE,

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY
INC. AND ZURICH AMERICAN
INSURANCE COMPANY,

Defendants.

Index No.: 54272/13

**CONSENT TO
CHANGE ATTORNEY**

IT IS HEREBY CONSENTED THAT Lewis & McKenna, of 82 East Allendale Road, Suite 6, Saddle River, NJ 07458, be substituted as attorneys of record for the Defendants, Yonkers Contracting Company, Inc. and Zurich American Insurance Company, in place and stead of Veneruso, Curto, Schwartz & Curto, LLP, as of the date hereof.

Dated: June 25, 2013

YONKERS CONTRACTING COMPANY, INC.

By: 

John-L. Kolaya, P.E.

President & Chief Operating Officer

ZURICH AMERICAN INSURANCE COMPANY

By: _____

Adrian A. Braganza

Senior Claims Counsel

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SUPERIOR GUNITE,

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY
INC. AND ZURICH AMERICAN
INSURANCE COMPANY,

Defendants.

Index No.: 54272/13

**CONSENT TO
CHANGE ATTORNEY**

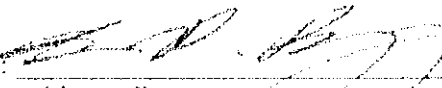
IT IS HEREBY CONSENTED THAT Lewis & McKenna, of 82 East Allendale Road, Suite 6, Saddle River, NJ 07458, be substituted as attorneys of record for the Defendants, Yonkers Contracting Company, Inc. and Zurich American Insurance Company, in place and stead of Veneruso, Curto, Schwartz & Curto, L.L.P., as of the date hereof.

Dated: June 25, 2013

YONKERS CONTRACTING COMPANY, INC.

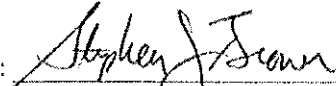
By: _____
John L. Kolaya, P.E.
President & Chief Operating Officer

ZURICH AMERICAN INSURANCE COMPANY

By:  _____
Adrian A. Braganza
Senior Claims Counsel

OUTGOING ATTORNEYS
VENERUSO, CURTO, SCHWARTZ &
CURTO, LLP

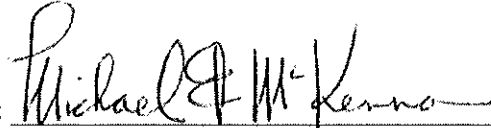
By:



Stephen J. Brown, Esq.
The Hudson Valley Bank Building
35 East Grassy Sprain Road, Suite 400
Yonkers, New York 10710
Phone: (914) 779-1100

INCOMING ATTORNEYS
LEWIS & McKENNA

By:



Michael F. McKenna, Esq.
82 East Allendale Road, Suite 6
Saddle River, New Jersey 07458
Phone: (291) 934-9800

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

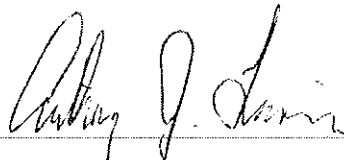
AFFIDAVIT OF SERVICE BY ELECTRONIC FILING

Anthony J. Tavormina, being duly sworn, deposes and says: that deponent is not a party to this action, that he is 18 years and upwards; that he is employed by Lewis & McKenna, the attorney for Defendants Yonkers Contracting Company, Inc. and Zurich American Insurance Company in the above captioned action; that the address of said attorneys is 82 East Allendale Road, Suite 6, Saddle River, New Jersey 07458.

On June 25, 2013, deponent served the within Consent to Change Attorney upon:

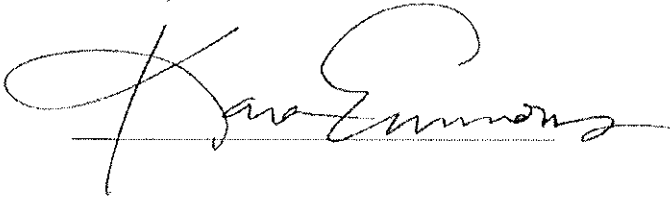
**ALL PARTIES AS APPEARED ON THE SUPREME COURT
STATE OF NEW YORK ELECTRONIC FILING WEBSITE.**

Mark Canizio, Esq.
Duane Morris LLP
1540 Broadway
New York, New York 10036
Attorneys for Plaintiff Superior Gunite



Anthony J. Tavormina

Sworn to before me
June 20, 2013



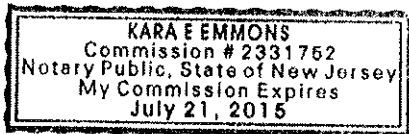


EXHIBIT “5”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
VILLA CONSTRUCTION, INC.,

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY INC.,
METROPOLITAN TRANSPORTATION AUTHORITY,
and ZURICH AMERICAN INSURANCE COMPANY,

Defendants.
-----X

Index No.

Plaintiff designates Westchester
County as the place of trial.
The basis of the venue is the forum
selection clause of the subject
contract.

SUMMONS

Plaintiff's principal place of
business is: 189 Brady Avenue,
Hawthorne, New York 10532

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer; or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the State, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
March 4, 2013

GOETZ FITZPATRICK LLP

By: _____

Donald J. Carbone, Esq.

Jason P. Rogers, Esq.

Attorneys for Plaintiff

Villa Construction, Inc.

One Pennsylvania Plaza, Suite 4401

New York, New York 10119

(212) 695-8100

Defendants' Addresses:

Yonkers Contracting Co., Inc.
969 Midland Avenue
Yonkers, New York 10469

Zurich American Insurance Co.
1400 American Lane
Schaumburg, IL 60196

Metropolitan Transportation
Authority
347 Madison Avenue
New York, New York 10017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
VILLA CONSTRUCTION, INC.,

Plaintiff,

Index No.

-against-

YONKERS CONTRACTING COMPANY INC.,
METROPOLITAN TRANSPORTATION AUTHORITY,
and ZURICH AMERICAN INSURANCE COMPANY,

**VERIFIED
COMPLAINT**

Defendants.

-----X

Plaintiff, Villa Construction, Inc., by its attorneys Goetz Fitzpatrick LLP, as and for its Verified Complaint against defendants, Yonkers Contracting Company, Inc., the Metropolitan Transportation Authority, and Zurich American Insurance Company, respectfully alleges as follows:

1. At all times hereinafter mentioned, Villa Construction, Inc. (hereinafter "Villa") was and is a domestic corporation duly organized and incorporated under and by virtue of the laws of the State of New York with its principal place of business located at 189 Brady Avenue, Hawthorne, New York 10532.

2. At all times hereinafter mentioned, Yonkers Contracting Company, Inc. (hereinafter "Yonkers") was and is a domestic corporation duly organized and incorporated under and by virtue of the laws of the State of New York with its principal place of business located at 969 Midland Avenue, Yonkers, New York 10469.

3. Upon information and belief, defendant Zurich American Insurance Company (hereinafter "Zurich"), was and is a domestic insurance company, organized and existing under

the laws of the State of New York and authorized to conduct business as a surety company, with a place of business located at 1400 American Lane, Schaumburg, IL 60196.

4. Upon information and belief, defendant the Metropolitan Transportation Authority (hereinafter the "MTA"), was and still is a municipal public service corporation duly organized and existing under and by virtue of the laws of the State of New York, with a place of business located at 347 Madison Avenue, New York, New York 10017.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "4" with the same force and effect as though more fully set forth at length herein.

6. On or about October 13, 2010, the MTA, as the owner, entered into a contract with Yonkers Contracting Company, Inc., (hereinafter "Yonkers"), as contractor, by which Yonkers undertook the duties and responsibilities of the general contractor for the Excavation/Mining/Lining of the Vertical Shaft E1, E2, Inclined Tunnels, T1 Connector Tunnel, and the Construction Ventilation Building and Station Entrance Structure at Site J, Contract No.: C-266510 (hereinafter the "Contract"), located at the south east corner of the intersection of 34th Street and 8th Avenue, in New York, New York (hereinafter the "Project").

7. In turn, on March 22, 2011, Yonkers entered into a written subcontract with Villa, pursuant to which Villa undertook to perform certain work relating to the installation of cast-in-place concrete for the initial agreed upon price of Fifteen Million, Nine Hundred Thousand and 00/100 Dollars (\$15,900,000.00) (hereinafter the "Subcontract"). See a true and correct copy of the Subcontract dated March 22, 2011, annexed hereto as Exhibit "A".

8. Villa fully performed all of the work and furnished all of the labor, material, and equipment requested by Yonkers, which has been retained without objection or notice of any defects.

9. Villa performed all of its obligations under the terms of the Subcontract.

10. The fair and reasonable value for the services performed by Villa for Yonkers at its specific instance and request pursuant to the Subcontract is Seventeen Million, Four Hundred Eighty-Three Thousand, Six Hundred and Fifty-Three and 00/100 Dollars (\$17,483,653.00).

11. Villa is currently due and owing at least the sum of Four Million, Three Hundred and Eighty-Eight Thousand, Three Hundred and Seventy-Eight and 00/100 Dollars (\$4,388,378.00), no part of which has been paid by Yonkers, although demand has been duly made.

12. Yonkers as failed and refused to make payment, although demand has been duly made by Villa.

13. Yonkers has failed to perform all of the terms and conditions of the Subcontract and has materially breached the Subcontract by, inter alia, failing and refusing to pay to Villa the sum of Four Million, Three Hundred and Eighty-Eight Thousand, Three Hundred and Seventy-Eight and 00/100 Dollars (\$4,388,378.00).

14. As a proximate and legal cause of the foregoing, Villa has been damaged and demands judgment against the defendant, Yonkers, in the amount of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-Eight and 00/100 Dollars (\$4,388,378.00), together with interest thereon, costs and reasonable attorneys' fees.

**AS AND FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)**

15. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "14" with the same force and effect as though more fully set forth at length herein.

16. Between July 1, 2011 and February 13, 2013, Villa, at the special instance and request of Yonkers, performed, provided, and furnished all work, labor, materials, equipment, related products, and services relating to the installation of cast-in-place concrete for the Project.

17. At the special instance and request and/or direction of defendant, Yonkers, Villa furnished labor, materials and equipment which was required for or incidental to certain construction work at the Project for a total agreed to price and reasonable value of Seventeen Million, Four Hundred Eighty-Three Thousand, Six Hundred and Fifty-Three and 00/100 Dollars (\$17,483,653.00).

18. Villa fully performed all of the work and furnished all of the labor, material, and equipment requested by Yonkers, which has been retained without objection or notice of any defects.

19. The fair and reasonable value for the services performed by Villa for Yonkers at its specific instance and request was in excess of the sum of Seventeen Million, Four Hundred Eighty-Three Thousand, Six Hundred and Fifty-Three and 00/100 Dollars (\$17,483,653.00).

20. Villa is currently due and owing at least the sum of Four Million, Three Hundred and Eighty-Eight Thousand, Three Hundred and Seventy-Eight and 00/100 Dollars (\$4,388,378.00), no part of which has been paid by Yonkers, although demand has been duly made.

21. Yonkers and the MTA have been unjustly enriched by retaining the benefit of the labor performed and materials and equipment furnished, but by failing to pay its full reasonable value, despite repeated demands by Villa for Four Million, Three Hundred and Eighty-Eight Thousand, Three Hundred and Seventy-Eight and 00/100 Dollars (\$4,388,378.00), which remains due and owing.

22. By reason of the above, Villa has been damaged and demands judgment against the defendants, Yonkers and the MTA, in the amount of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00), together with interest thereon, costs and reasonable attorneys' fees.

**AS AND FOR A THIRD CAUSE OF ACTION
(Payment Bond Claim)**

23. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "22" with the same force and effect as though more fully set forth at length herein.

24. Upon information and belief, on or about September 3, 2010, Zurich, as surety, and Yonkers, as principal, executed Payment Bond No. PRF09011946 (the "Bond"), wherein Zurich and Yonkers undertook to guarantee the prompt payment of all monies due to all persons furnishing labor, materials, supplies or equipment used in the Project pursuant to the above-referenced contract between the MTA and Yonkers. See a true and correct copy of the Bond is annexed hereto and made a part hereof as Exhibit "B".

25. Villa is the intended beneficiary of the Bond; is a claimant who performed work and furnished materials to Yonkers in the prosecution of Yonkers's work under the Contract, as is more fully set forth herein; and is entitled to have its claim as set forth herein satisfied from said undertaking.

26. Villa performed all of its obligations under the terms of the Subcontract and has complied with all of the conditions contained in the Bond.

27. Villa is currently due and owing at least the sum of Four Million, Three Hundred and Eighty-Eight Thousand, Three Hundred and Seventy-Eight and 00/100 Dollars (\$4,388,378.00), no part of which has been paid by Yonkers, although demand has been duly made.

28. Pursuant to the Bond, Zurich is liable to Villa for the Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00) left unpaid by Yonkers.

29. Through its counsel, Goetz Fitzpatrick LLP, by letter dated February 22, 2013, Villa made a claim upon the Bond in the sum of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00). See a true and correct copy of the letter dated February 22, 2013 pursuant to which Villa made a claim upon the Bond, annexed hereto and made a part hereof as Exhibit "C".

30. Zurich has failed and refused to make payment, although demand has been duly made by Villa.

31. By reason of the above, Villa has been damaged and demands judgment against the defendant Zurich, as surety, and Yonkers, as principal, in the amount of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00), together with interest thereon, costs and reasonable attorneys' fees.

AS AND FOR A FOURTH CAUSE OF ACTION
(Mechanic's Lien Foreclosure and Claim against Mechanic's Lien Discharge Bond)

32. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "31" with the same force and effect as though more fully set forth at length herein.

33. The aforesaid work, labor, and services were performed and the materials were furnished by Villa for the Project with the consent, knowledge, and approval of the defendant MTA, as the public owner having charge of such construction and being charged with the custody and disbursements of the public funds applicable to the Project.

34. The aforesaid work, labor, and services were performed and the materials were furnished by Villa in furtherance of the contract between defendants Yonkers and the MTA, and all of said labor performed and materials furnished by Villa as aforesaid were a portion of the labor and materials contracted to be performed and furnished by Yonkers in said contract.

35. The aforesaid work, labor, and services of Villa and the materials furnished by Villa were furnished toward and actually used for the Project.

36. In full compliance with the Lien Law of the State of New York, on or about February 8, 2013, and within four (4) months of the Project's completion and acceptance, plaintiff Villa caused to be duly filed a Notice Under Mechanic's Lien Law For Account Of Public Improvement with the defendant MTA, being the department or bureau having charge of such construction and charged with the custody and disbursements of the public funds applicable to the contract for the Project, together with a proof of service by Certified Mail, Return Receipt Requested upon Yonkers, for the amount due to Villa as set forth herein for the labor performed and materials furnished by Villa as aforesaid, *to wit*, \$4,388,378.00, upon the

moneys of said public corporation applicable to the construction of such public improvement, to the extent of the amount due or to become due on the contract (hereinafter "the Lien"). See a true and correct copy of said Notice Under Mechanic's Lien Law For Account Of Public Improvement and affidavit of service thereof are attached hereto as Exhibit "D" and made a part hereof.)

37. In compliance with the requirements of the applicable provisions of the Lien Law, copies of Villa's Notice of Public Improvement Mechanic's Lien were served on defendant Yonkers, and affidavits of service thereof were filed therewith. See Exhibit D.

38. The aforesaid Notice of Public Improvement Mechanic's Lien of Villa was fully and in all respects in conformance and compliance with the provisions and requirements of the Lien Law of the State of New York; and were duly, properly, and timely filed and docketed with the head of the department or bureau having charge of such construction and with the financial officer of the public corporation, or other officer or person charged with the custody and disbursements of the public funds applicable to the contract for the Project, in accordance with the requirements of the Lien Law.

39. At the time of the filing of said Notices of Public Improvement Mechanic's Lien, plaintiff Villa had entered upon the performance of their respective work, in accordance with their respective agreements, and had duly performed and had so far completed the same as to have become entitled to a payment on account thereof, and there was then monies owing to defendants Yonkers, as contractor and/or construction manager, in excess of plaintiff's claim and all other claims alleged herein.

40. Plaintiff's lien has not been paid, waived, cancelled or discharged in whole or in part, and no action or proceeding at law or equity has been brought for the enforcement or

foreclosure of the Lien or to recover upon the claim of Plaintiff resulting or arising from the Lien, except in the following respect: on February 22, 2013, after the Lien was filed and before the commencement of this action, Zurich, as surety, with Yonkers, again as principal, issued a Mechanic's Lien Discharge Bond in the amount of Four Million, Eight Hundred and Twenty-Seven Thousand, Two Hundred and Two Hundred and Fifteen and 00/100 Dollars (\$4,827,215.80), or one hundred and ten percent of the Lien amount, thereby discharging the Lien from the subject real property. See a true and correct copy of Zurich Mechanic's Lien Discharge Bond No. LPM0911094, dated February 22, 2013 (hereinafter the "Lien Bond"), annexed hereto and made a part hereof as Exhibit "E".

41. Upon information and belief, the Lien Bond, upon filing with the MTA, executed by Yonkers, as principal, and Zurich, as surety, firmly bound same as obliges in the amount of Four Million, Eight Hundred and Twenty-Seven Thousand, Two Hundred and Two Hundred and Fifteen and 00/100 Dollars (\$4,827,215.80), conditioned for the payment of any judgment which might be rendered for the enforcement of the Lien.

42. Plaintiff, Villa, in the intended beneficiary of the Lien Bond and is entitled to have its claim as set forth herein satisfied from said undertaking.

43. Upon information and belief, Plaintiff's claim and Lien are superior to those claims and liens of all persons who have a claim to have some lien or interest on or upon the funds due and/or to become due under the Contract between Yonkers and the MTA.

44. By reason of the above, Villa has been damaged and demands judgment (i) determining that Plaintiff acquired a valid lien in the amount of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00), plus interest, upon the monies due and/or to become due to Yonkers under the

Contract until the time of discharge of Plaintiff's Lien by the filing of the Zurich Mechanic's Lien Discharge Bond; (ii) granting Plaintiff judgment for the enforcement of the Lien, in form only, for the purpose of satisfying the condition of the Zurich Mechanic's Lien Discharge Bond; (iii) declaring Zurich liable under the Zurich Mechanic's Lien Discharge Bond; and, (iv) granting Plaintiff judgment on the Zurich Mechanic's Lien Discharge Bond for Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00), together with interest thereon, costs and reasonable attorneys' fees.

WHEREFORE, Plaintiff, Villa Construction Inc., demands judgment against defendants, Yonkers Contracting Company, Inc., the Metropolitan Transit Authority and Zurich American Insurance Company, as follows:

- 1) On the First Cause of Action in the amount of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00), together with interest thereon, costs, and reasonable attorneys' fees, along with such other and further relief as to this court may seem just and proper under the circumstances;
- 2) On the Second Cause of Action in the amount of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00), together with interest thereon, costs, and reasonable attorneys' fees, along with such other and further relief as to this court may seem just and proper under the circumstances;
- 3) On the Third Cause of Action in the amount of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00), together with interest thereon, costs, and reasonable

attorneys' fees, along with such other and further relief as to this court may seem just and proper under the circumstances; and,

4) On the Fourth Cause of Action that it be adjudged that:

i. Plaintiff acquired a valid lien in the amount of Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00) upon the monies due and/or to become due to Yonkers Contracting Company Inc. under its contract with the Metropolitan Transportation Authority, Contract No. C-266510, until the time of discharge of Plaintiff's Lien by the filing of the Zurich Mechanic's Lien Discharge Bond No. LPM0911094, dated February 22, 2013;

ii. That Plaintiff have and recover judgment for the enforcement of the Lien, in form only, for the purpose of satisfying the condition of the Zurich Mechanic's Lien Discharge Bond No. LPM0911094, dated February 22, 2013;

iii. Declaring Zurich liable under the Zurich Mechanic's Lien Discharge Bond No. LPM0911094, dated February 22, 2013; and,

iv. Granting Plaintiff judgment on the Zurich Mechanic's Lien Discharge Bond No. LPM0911094, dated February 22, 2013, for Four Million, Three Hundred and Eighty-eight Thousand, Three Hundred and Seventy-eight and 00/100 Dollars (\$4,388,378.00), together with interest thereon, costs and reasonable attorneys' fees; and,

5) For such other and further relief as to this court may seem just and proper.

Dated: New York, New York
March 4, 2013

GOETZ FITZPATRICK LLP

Donald J. Carbone, Esq.

Jason P. Rogers, Esq.

Attorneys for Plaintiff

Villa Construction Inc.

New York, New York 10606

(212) 695-8100

ATTORNEY VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

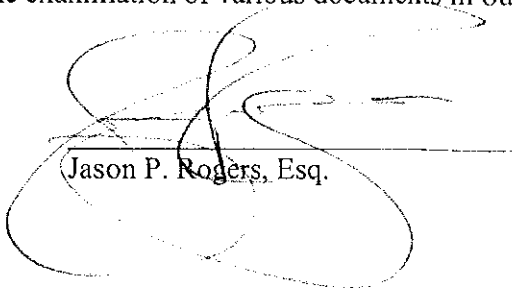
JASON P. ROGERS, being duly sworn, deposes and says:

I am an attorney admitted to practice before the Courts of the State of New York, and I am associated with the law firm of Goetz Fitzpatrick LLP, located at One Penn Plaza, Suite 4401, New York, New York 10119, attorneys of record for VILLA CONSTRUCTION INC., Plaintiffs in the within action.

The reason this Verification is made by me and not by Plaintiff, VILLA CONSTRUCTION INC., because they do not reside within the County in which I have my office.

I have read the foregoing **VERIFIED COMPLAINT** and know the contents thereof; that the same is true to my knowledge, except as to the matters therein alleged upon information and belief, and those matters I believe them to be true.

The grounds for my belief as to all matters not stated upon my own knowledge are as follows: communications with our client and the examination of various documents in our possession which concern this matter.



Jason P. Rogers, Esq.

Dated: New York, New York
March 4, 2013

EXHIBIT “6”



Capital Construction

July 17, 2013

MTA-YCC-L-00144

Mr. Robert Stepien
Yonkers Contracting Company
511 West 33rd Street, 5th Floor
New York, NY 10001

Subject: Contract C-26510 (Site J): Excavation/Mining/Lining of Vertical Shaft, E1 and E2 Inclined Tunnels and T1 Connector Tunnel & Construction of a Ventilation Building and Station Entrance Structure

Re: Site J Water Test

Dear Mr. Stepien:

As per the telephone conversation with Ali Catik today, you are hereby directed to flood test the E1 tunnel. You can start with the top-most Panel #13 and work your way downwards to Panel #11. This water test must be done on Friday, July 19, 2013.

Your project work will not be accepted until you satisfy the Chief Engineer and Code Compliance regarding the use of shotcrete. Attached is a copy of the Stop Work Order for your information.

If you have any questions, feel free to contact me at (646) 252-8330.

Sincerely,
MTA CAPITAL CONSTRUCTION COMPANY

Ramesh Ramanathaiah
Construction Manager

cc: M. Horodniceanu, S. Kildare, M. Schiffman, R. Martone, M. Rafat, S. Asquith, M. Mahmoud,
File

Attachment

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

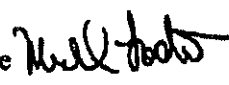
MTA, NYC TRANSIT, CPM
CODE COMPLIANCE OFFICE

STOP WORK ORDER

Date: July 17, 2013

To: Ron Pezik, Program Manager, MTACC
Ramesh Ramanathaiah, Construction Manager, MTACC
Paul Matthews, PE, Construction Manager, MTACC

From: Michael Lodespoto, Principal Code Enforcement Officer, Code Compliance



Re: Contract C-26505 Furnishing and Installing Finishes and Systems on
the 7 West Project – Site J

Under the Administration and Enforcement of the NYS Uniform Fire Prevention
and Building Code as Authorized Under Part 1204 of Title 19 of NYCRR
MTA New York City Transit, a Construction Permit Agency
approved by the Secretary of State issues this **STOP WORK ORDER**

Please be advised that the Temporary Construction Permit issued for Contract C-26505 dated February 1, 2011 and extended on 7/3/2013 until October 1, 2013 has been withdrawn due construction taking place that was not in compliance with the design drawings for which the Temporary Construction Permit was issued.

Reasons why this Stop Work Order was issued:

1. Shotcrete (pneumatically applied concrete) was used in an overhead application on the arches located above escalators E1 and E2. This method is not what was specified in the signed drawings for which the Temporary Construction Permit was issued. A plan to address Code concerns was developed at a July 1, 2013 meeting and has been discussed and documented subsequently. This plan must be completed and the results must be acceptable to the required parties at NYCT.
2. Significant amounts of water leaks have been observed. Water infiltration issue must be addressed.

All work at Site J taking place under the systems and finishes contract, C-26505, shall cease immediately. Work shall not commence until the conditions specified in the attached letter are complied with to the satisfaction of NYCT.


Code Enforcement Officer

7/17/13
Date

cc:

Mohammad Baalbaki (NYCT/MoW), John Barkaus (NYCT/CPM), Mark Bienstock (NYCT/CPM), Anthony Cassella (NYCT/MoW), Gricelda Cespedes (NYCT/CPM), Shawn Kildare (MTA CCC), Michael Kyriacou (MTA CCC), Joe Leader (NYCT/Subways), Frank Mondello (NYCT/CPM), Ken Mooney (NYCT/MoW), Madan Naik (NYCT/CPM), Seymour Portes (NYCT/CPM), Fred Smith (NYCT/CPM)

EXHIBIT “7”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

P R E S E N T :

Hon. Alan D. Scheinkman
Justice Supreme Court

-----X
SUPERIOR GUNITE,

Plaintiff,

-against-

YONKERS CONTRACTING COMPANY, INC. AND
ZURICH AMERICAN INSURANCE COMPANY,

Defendants.
-----X

~~PROPOSED~~
PRELIMINARY CONFERENCE
ORDER - COMMERCIAL CASE

Index No. 54272/2013

SCHEINKMAN, J.:

Counsel having appeared for a Preliminary Conference on July 25, 2013 :

Plaintiff:

Superior Gunite

DUANE MORRIS LLP
Allen J. Ross, Esq.
Mark Canizio, Esq.
1540 Broadway
New York, New York 10036
Tel. (212) 692-1000
Fax (212) 692-1020

Defendants:

Yonkers Contracting Company, Inc. and
Zurich American Insurance Company

LEWIS & McKENNA
Michael F. McKenna, Esq.
82 East Allendale Road, Suite 6
Saddle River, New Jersey 07458

Tel. (201) 934-9800
Fax (201) 934-8681

RECEIVED

JUL 24 2013
ALAN D. SCHEINKMAN
JUSTICE OF THE
SUPREME COURT

and the Court having conducted a Preliminary Conference in the above-entitled action, it is hereby ORDERED as follows, pursuant to Rule 8 of the Rules of Practice for the Commercial Division:

1. Any Demand for a Bill of Particulars shall be served on or before N/A and any Bill of Particulars shall be served on or before _____.
- 2A. Defendants' Demands for Discovery and Inspection shall be served on or before 8/26/2013 and all Responses to such Demands shall be served on or before 9/26/2013.
- 2B. Defendants' Responses to Plaintiff's Demands for Discovery and Inspection shall be served on or before 8/14/2013.
3. Any Interrogatories shall be served on or before 8/26/2013 and all Answers to Interrogatories shall be served on or before 9/26/2013.
4. Any deposition on Oral Questions to be taken of Plaintiff shall be held on or before 10/31/2013 at a location to be determined by the parties.
5. Any deposition on Oral Questions to be taken of Defendants shall be held on or before 10/31/2013 at a location to be determined by the parties.
6. Any deposition on Oral Questions to be taken of any non-parties shall be held on or before 11/29/2013 at a location to be determined.
7. Other Disclosure, including Expert Disclosure, shall be:
completed on or before 11/29/2013.

8. Electronic Discovery shall be:
completed on or before 10/1/2013.

9. Discovery shall be limited to the following issues:

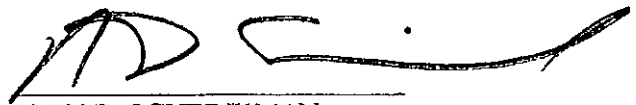
Breach of contract issues and resulting damages.

10. Impleader shall be completed on or before 8/25/2013.
11. All discovery shall be completed by 12/11/2013 and any discovery not then completed may be considered waived. The failure to provide a document, or to otherwise provide discovery, may result in preclusion.
12. A Trial Readiness Conference will be held on 8/12/12/13 at 9:30. On this date a Trial Readiness Order will be issued to the Plaintiff to which Plaintiff shall serve and file a Note of Issue and Certificate of Readiness within (10) days of the date of the Trial Readiness Order.
13. Absent an order of the Court to the contrary, the making of any dispositive motion will NOT stay discovery and will NOT result in, or justify, any change or adjustment in the dates set forth hereinabove.
14. THE DATES SET FORTH ABOVE MAY NOT BE ADJOURNED EXCEPT WITH THE PRIOR APPROVAL OF THE COURT.
15. In the event of a discovery dispute, counsel shall comply with Rule 14 of the Rules of Practice in the Commercial Division. In furtherance thereof, in the event that counsel, after good faith consultation, cannot resolve a discovery dispute, counsel shall promptly contact the Court at 914-824-5419 and arrange for either an in-court or telephonic conference. No motion relating to discovery shall be made without the prior permission of the Court. Neither the existence of any discovery dispute nor the making of any discovery motion shall result in, or justify, any change or adjustment in the dates set forth above, unless otherwise permitted by the Court.
16. All motions (including any discovery motions permitted by the Court) shall be governed by Rules 16 through 24 of the Rules of Practice in the Commercial Division. No sur-reply (which includes reply in further support of a cross-motion) or post-submission papers will be considered by the Court, except as authorized by the Court or by Rule 18. All motions shall be made returnable on Fridays. No motion shall, absent the permission of the Court, be made returnable on any other day.
17. Counsel shall not copy the Court on correspondence between them.
18. No document, including correspondence, shall be sent to the Court without prior authorization from Chambers to do so.

19. Absent the express permission of the Court, copies of all papers filed with the Court shall be transmitted to all opposing counsel in such fashion as to be received by counsel prior to, or contemporaneously with, receipt by the Court.

Dated: White Plains, New York

July 25, 2013

A handwritten signature in black ink, appearing to read 'Alan D. Scheinkman', written over a horizontal line.

ALAN D. SCHEINKMAN
Supreme Court Justice

EXHIBIT "8"

LEWIS & MCKENNA

ATTORNEYS AT LAW

PAUL Z. LEWIS*†
MICHAEL F. MCKENNA*‡
JOHN P. DI BIASI*†
JAMES M. McMAHON*†
GREGORY S. GOETT†
ANNE E. PENIX*
NICHOLAS J. ZAITA†
LEVI W. BARRETT†
ANTHONY J. TAVORMINA†

GEORGE F. MACKEY*‡
OF COUNSEL

* NJ BAR
‡ FL BAR
† DC BAR
◇ PA BAR
† NY BAR
* MA BAR
* TX BAR

October 28, 2013

NEW JERSEY OFFICE
82 EAST ALLENDALE ROAD
SADDLE RIVER, N.J. 07458
(201) 934-9800
TELECOPIER: (201) 934-8681

NEW YORK OFFICE
250 WEST 57TH STREET
SUITE 1619
NEW YORK, N.Y. 10107
(212) 772-0943

WWW.LEWISMCKENNA.COM

REPLY TO: NJ

atavormina@lewismckenna.com

- Via First Class Mail -

Honorable Alan D. Scheinkman
Supreme Court Justice
Commercial Division
Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601

Re: Superior Gunite v. Yonkers Contracting Company, Inc. et al.
Index No.: 54272/2013
New Issues Impacting Discovery

Dear Judge Scheinkman:

With regard to the above-referenced matter currently pending, and given past discussions with your Honor, we thought it best to make you aware of issues that could significantly impact the present discovery schedule. This litigation involves issues arising from a major contract for the Metropolitan Transit Authority (MTA) to construct part of a new subway station in the area of 34th Street and 10th Avenue in New York City.

On this Project, Yonkers was the General Contractor and Superior Gunite was one of the many subcontractors. The MTA has issued a Stop Work Order with regard to issues that include questions as to the structural integrity of concrete work performed for escalator shafts that will eventually take passengers up and down to the station. Specifically, the MTA questions work performed by Superior Gunite.

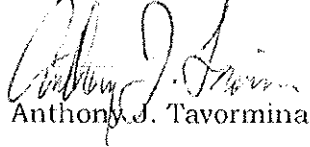
At present, these issues are very much up in the air as to how they will resolve themselves. There are many permutations and Yonkers does not know how MTA will want to proceed. Therefore, Yonkers cannot really proceed with discovery when the core issues are yet to be determined, let alone resolved. Yonkers can and will proceed on other aspects of the disputes, but Yonkers cannot know what MTA will decide to do. Further, these issues are not such that they can be cut away from the other parts of the underlying dispute.

Honorable Alan D. Scheinkman
Superior Gunit v. Yonkers Contracting Company, Inc. et al.
Index No.: 54272/2013
New Issues Impacting Discovery
October 28, 2013
Page 2

The genesis of the problem is that Superior Gunit initiated this litigation prior to the acceptance of its work on the underlying Project. This is not meant to cast any type of fault onto Superior Gunit, it just means that the litigation was started before resolution of the work by Superior Gunit.

We will proceed as best we can, but thought it in everyone's best interest to alert the Court of this issue as soon as practical. We understand and respect your Court's preference to adhere to its established discovery dates, and respectfully inform you that resolution of the issue concerning Superior's installed concrete may necessitate extending this matter's discovery period, which is currently set as December 11, 2013.

Very truly yours,



Anthony J. Tavormina

cc: Mark A. Canizio, Esq. *(Via US Mail)*

EXHIBIT “9”

LEWIS & MCKENNA

ATTORNEYS AT LAW

PAUL Z. LEWIS*†
MICHAEL F. MCKENNA*†△
JOHN P. DI BIASI<*†△
JAMES M. McMAHON*†*
GREGORY S. GOETT†*
ANNE E. PENIX**
NICHOLAS J. ZAITA††
LEVI W. BARRETT††
ANTHONY J. TAVORMINA*†

GEORGE F. MACKAY*†△
OF COUNSEL

* NJ BAR
< FL BAR
† DC BAR
△ PA BAR
† NY BAR
* MA BAR
* TX BAR

January 15, 2014

NEW JERSEY OFFICE
82 EAST ALLENDALE ROAD
SADDLE RIVER, N.J. 07458
(201) 934-9800
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NEW YORK OFFICE
250 WEST 57TH STREET
SUITE 1618
NEW YORK, N.Y. 10107
(212) 772-0943

TEXAS OFFICE
1000 HERITAGE CENTER CIRCLE
AUSTIN, TX 78664
(512) 865-4076

WWW.LEWISMCKENNA.COM

REPLY TO:

atavormina@lewismckenna.com

- Via Federal Express Overnight and Electronic Mail -

Mark A. Canizio, Esq.
Partner
Duane Morris LLP
1540 Broadway
New York, New York 10036

Re: Superior Gunit v. Yonkers Contracting Company, Inc., et al.
Status of Staying Action

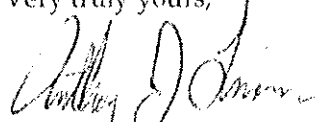
Dear Mr. Canizio:

As you are well aware, the work performed by Superior Gunit on the Site J construction project is currently under critical examination by the project's owner, the Metropolitan Transportation Authority ("MTA"). To date, the MTA's findings have indicated that significant voids are present within the concrete installed by Superior Gunit and that such work does not conform to the project's contractual requirements. In the interim, Superior Gunit has made efforts to remediate this concrete work while Yonkers Contracting Company, Inc. ("Yonkers") has been forced to incur significant costs and impacts to its schedule - all of which are exclusive of and in addition to the current claims that are the subject of dispute in the above-referenced action.

Given that work related to the voids in the concrete is still ongoing, it is apparent that discovery cannot be completed at this time. Moreover, we agreed that it would be senseless to pursue additional claims in a separate action in order to avoid duplicative discovery, unnecessary costs, and the potential of inconsistent rulings. That being said, please advise immediately as to whether you intend to abide by the Court's recommendation to stay this action until such time as the causes of all issues stemming from work performed by Superior Gunit on the Site J project have been identified - specifically, those related to the voids. Yonkers will cooperatively participate in the execution of such a stay, so long as Yonkers is provided with 30-days' notice in advance of the decision to reinstate this matter on the Court's docket. Should you not devote

your immediate attention to this discovery issue, then the Court's currently imposed discovery end date of January 16, 2014 and trial readiness conference of January 17, 2014 will remain intact, and we will be obligated to adhere to the current discovery schedule moving forward.

Very truly yours,



Anthony J. Tavormina

EXHIBIT “10”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER: COMMERCIAL DIVISION*Superior Granite*

Plaintiff (s),

TRIAL READINESS ORDER

-against-

Index No. *54272/13**Gonsky Contracting Co.*

Defendant (s).

SCHEINKMAN, J.


The parties having been heard, or having been given the opportunity to be heard, the undersigned finds that all pre-trial proceedings are complete and that the matter is ready for trial. No further discovery shall be permitted except upon motion and upon a showing of compelling and unanticipated circumstances.

The plaintiff shall serve and file a Note of Issue and Certificate of Readiness within ten (10) days of the date of this order. A working copy of the e-filed Note of Issue shall be mailed to the Court. In the event the Note of Issue is not filed within ten days of the date of this Order, all counsel shall be required to appear for a conference on *2/14/14* to explain why the Note of Issue was not timely filed.

Motions for Summary Judgment. All motions for summary judgment must be served within 30 days of the filing of the Note of Issue. All parties wishing to move for summary judgment must move by this deadline because any motions (including any cross-motions) served/filed after this deadline will not be considered for the affirmative relief sought and will only be considered to the extent they present an opposition to the motion for summary judgment.

The parties' attention is directed to the Rules of Practice for the Commercial Division, which will be strictly enforced.

Dated: *January 28th 2014*
White Plains, New York



HON. ALAN D. SCHEINKMAN
Justice of the Supreme Court

EXHIBIT “11”

NOTE OF ISSUE

Calendar No. (if any) _____

: For use of clerk

Index No. 54272/2013Supreme Court, Westchester CountyName of assigned judge Hon. Alan D. Scheinkman, J.S.C.SUPERIOR GUNITE

Plaintiff(s)

-against-

YONKERS CONTRACTING COMPANY, INC. and
ZURICH AMERICAN INSURANCE COMPANY,

Defendant(s)

Special Preference claimed under _____

on the ground that _____

Attorney(s) for Plaintiff(s) Duane Morris LLPOffice and P.O. Address
1540 BroadwayNew York, New York 10036Telephone No.: (212) 692-1000Attorney(s) for Defendant(s) Lewis & McKennaOffice and P.O. Address
82 East Allendale Road, Suite 6Saddle River, NJ 07458Telephone No.: (201) 934-9800**NOTICE FOR TRIAL**Trial by jury demanded ☐☐ of all issues☐ of issues specified below☐ or attached heretoTrial without jury ☒Filed by attorney(s) for Plaintiff Superior GuniteDate summons served March 25, 2013Date service completed April 18, 2013Date issue joined May 20, 2013**Nature of Action or Special Proceeding**

Tort:

Motor Vehicle Negligence ☐Medical Malpractice ☐Other tort ☐Contract ☒Contested matrimonial ☐Uncontested matrimonial ☐Tax certiorari ☐Condemnation ☐Other (not itemized above) ☐

(specify) _____

Indicate if this action is brought
as a class action ☐Amount demanded \$ 3,199,239.00 plus other relief
interest, costs, disbursementsOther relief and attorneys' fees.Insurance carrier(s), if known: None**NOTE: The clerk will not accept this Note of Issue unless accompanied by a Certificate of Readiness.**

CERTIFICATE OF READINESS FOR TRIAL

(Items 1-7 must be checked)

For Clerk's Use

N. I. served on

- | | Complete | Waived | Not Required |
|---|-------------------------------------|--------------------------|-------------------------------------|
| 1. All pleadings served | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Bill of Particulars served | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Physical examinations completed..... | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Medical reports exchanged..... | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Appraisal reports exchanged | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Compliance with section 202.16 of the Rules of the Chief
Administrator (22 NYCRR 202.16) in matrimonial actions..... | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Discovery proceedings now known to be necessary
completed | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. There are no outstanding requests for discovery. | | | |
| 9. There has been a reasonable opportunity to complete the foregoing proceedings. | | | |
| 10. There has been compliance with any order issued pursuant to section 202.12 of the Rules of the Chief
Administrator (22 NYCRR 202.12). | | | |
| 11. If a medical malpractice action, there has been compliance with any order issued pursuant to section 202.56
of the Rules of the Chief Administrator (22 NYCRR 202.56). | | | |
| 12. The case is ready for trial. | | | |

Dated: New York, New York
February 7, 2014

/S/ Mark Canizio
(Attorney must sign above and type name below)
Mark Canizio
Attorney(s) for: Plaintiff Superior Gunite
Office and Post Office Address
Duane Morris, LLP
1540 Broadway
New York, New York 10036
Telephone No.: 212-692-1000

EXHIBIT “1”



Yonkers Contracting Company, Inc.

Building Quality for Over 60 Years

969 Midland Avenue Yonkers, NY 10704 Tel 914.965.1500

August 2, 2013

Mr. Ramesh Ramanathaiah, P.E.
Construction Manager
MTA New York City Transit
424 West 33rd Street, Suite 240
New York, NY 10001

Re: Contract C-26510 (Site J)
Water Tests for Arch E1

Dear Ramesh,

We are in receipt of your letter of July 25, 2013, directing Yonkers to perform a Water Test for Arch E1. Yonkers believes that it would be in the best interests of the MTA that this Water Test be performed by Skanska, so that the Site J Project can be closed out. Further, Skanska is currently mobilized in the area and will be able to perform this work at a lower cost to the MTA.

Yonkers has performed its contract work and the performance of this Water Test is not included in the Contract, Specifications or elsewhere in the Contract Documents. Further, we feel compelled to state our deep concerns that this MTA experiment will not work and could have serious detrimental impacts on the existing work. Further, the performance of this experiment will void any and all warranties of Yonkers regarding this area.

Yonkers Properly Installed the MTA's Water-Proofing System

As you are aware, unlike many other MTA designs, the MTA decided to implement an "undrained" waterproofing system on this and other 7-Line projects. Per the contract, Yonkers and its subcontractors installed the waterproofing system in accordance with the specifications and under the watchful eye of many. From our review, there seem to be two separate components to the MTA's undrained system. The first is to stop the infiltration of water from the outside in. This design was developed by MTA and its consultants, detailed in the plans and specifications and then implemented by Yonkers and its subcontractors. The design allows the build up of hydrostatic pressure from the ground water with no provisions for draining any water that may find its way into the waterproofing system, thus presenting a significant challenge for the MTA to control in the future.

Yonkers and its subcontractors performed and implemented the plan design. Each and every step was reviewed, inspected and found to be in conformance. Afterwards, some leaks were found to exist, especially after heavy rains. As per the Specifications, Section 3.06, Yonkers, through its waterproofing subcontractor, began to implement the contract mandated remedies for any leaks. This part of the MTA design has proven to be successful, as the water penetration has been confined to a few minor locations during this process. Yonkers is near completion on the first of three passes of polyurethane grouting which comprise the specified process.

MTA Directed Yonkers to Perform Additional Water Tests

Now, the MTA wants to implement the second and more experimental part of its design. This new and unproven design involves the use of a lateral water barrier. Yonkers understood that it was MTA's intent that this system would be used for some future purpose and that its implementation was not part of the Project requirements.

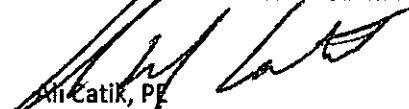
As requested, and as a favor, Yonkers at the request of MTA attempted a Water Test on a wall section. In theory, each panel has four grout tubes that connect to four different entry points. MTA's thought was that water would be introduced at one of the two lower grout tubes and pumped in until there was water flowing out of the two grout tubes at the top. The theory is that there is a water barrier at the edges of each panel with small raised ribs that are supposed to stop the passage of water from one panel to the next. This would then allow for the build up of water pressure inside the panel so that it would push the water up to the upper grout ports.

Under the direction and supervision of MTA and its designer, Yonkers introduced 90 gallons of water into the wall panel. Water never flowed to the top grout ports as MTA's design would suggest. Indeed, none of us know where it went. Based on water surfacing from new areas in the floor, we believe the water may have flowed to the "water barrier," and went right past it or even more likely the water barrier itself became a transport agent for the water as it flowed along the channels in the water barrier. Of the 90 gallons, only 30 were recovered, with 60 gallons going someplace in the wall system. The test results seemed inclusive to Yonkers.

Important, given the new series of Water Tests, is that it should be obvious that the concept of a Water Test such as that suggested/mandated by the MTA does not make sense. The purpose of a water proofing system is to keep water from getting inside of the water proofing. The Water Test is by its nature just the opposite of such a system. It is the purposeful introduction of water inside of the planned waterproof barrier (between the waterproofing and the outside surface of the concrete). It is placement of water in the exact location where water is not supposed to be.

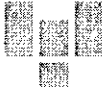
We wish to plainly state that we believe this is an unwise decision. We are concerned about the grout tube layout with only four tubes per massive panel. We are concerned about water penetration through the filter fabric into which the water is pumped. We believe that it would be in the best interest of the MTA to mitigate delays and contain additional cost of this extra work if it is performed by Skanska. If Yonkers must perform this extra work, it is not a Project requirement, and we would expect to be compensated on a time and material basis. Furthermore, if ultimately directed to perform this work, any procedures must be provided by the MTA to Yonkers.

Very Truly Yours,
YONKERS CONTRACTING COMPANY



Ali Catik, PE
Executive Vice President

EXHIBIT “2”



Yonkers Contracting Company, Inc.

Building Quality for Over 50 Years 969 Midland Avenue Yonkers, NY 10704 Tel 914.965.1500 Fax 914.378.8880

via email and overnight mail delivery

August 2, 2013

Mr. Frank Townsend
Superior Gunitite
12306 Van Nuys Blvd.
Lake View Terrace, CA 91342

Re: Site J – Voids found in shotcrete at E1/E2 inclines

Dear Mr. Townsend,

We are in receipt of the attached "Stop Work Order" from the MTA regarding work performed by your company.

As you are aware and as per previous correspondence, voids in the shotcrete liner have been found in the E2 incline and, more recently, are suspected by the MTA in the E1 incline. YCC's waterproofing subcontractor has been chemical grouting the perimeter shotcrete walls and inclines for several months and has had success in stopping the majority of leaks at Site J. However, there remain several "significant leak areas" that have been identified in E1 that the MTA believes are caused by voids in the shotcrete liner placed by Superior Gunitite. Such voids cannot appropriately be repaired with chemical grouting, nor is it the responsibility of our waterproofer to do so.

YCC hereby directs Superior Gunitite to thoroughly investigate the "significant leak areas" identified in E1 incline and immediately implement whatever means necessary to perform repairs to the liner as necessary. Removal of sections of the shotcrete liner may be required to ascertain its condition in these "problem leak areas". The E1 incline must be started immediately followed by the E2 incline, which is still being chemical grouted at this time and the "significant leak areas" if any, have yet to be identified.

In addition to the voids found in the Shotcrete liner, you will be held liable for any damage found to compromise the integrity of the waterproofing system by your shotcreting operations. You are also aware that the MTA has directed that cores be taken to a depth of 11 inches into the concrete liner. The purpose of the cores is to determine the cause of the leaks, the adequacy of the concrete compaction (especially on the far side of the rebar) and porosity of the in place

concrete. Please be advised that the MTA may elect to conduct deeper cores to inspect the possibility of shadowing at the outside layer of rebar.

The MTA is extremely concerned that the quality of your work and the leaks may negatively impact Skanska's follow on contract work in these areas. Further, the MTA is directing Yonkers to perform certain water tests using the grout portals in the design.

Superior Gunitite will be held liable for any direct and consequential damages and costs arising from any latent defects or quality issues which may be found during this investigation. As you know, you have a contractual responsibility to hold Yonkers harmless of any and all costs.

You are reminded of the Time is of the Essence clause contained in your Subcontract Agreement. In the meantime, we will continue to keep you advised of this investigation, but want to stress the potential serious nature of the MTA's actions.

Please contact the undersigned immediately to discuss your intentions regarding this issue.

Very Truly Yours,
YONKERS CONTRACTING COMPANY



Ali M. Catik
Executive Vice President

Attachment

cc: JK, JS

LTR to Superior Gunitite 00005 file

2 Broadway, 8th Fl
New York, NY 10004-2207

Dr. Michael F. Horodniceanu
President



Capital Construction

July 17, 2013

MTA-YCC-L-00144

Mr. Robert Steplen
Yonkers Contracting Company
511 West 33rd Street, 5th Floor
New York, NY 10001

Subject: Contract C-26510 (Site J): Excavation/Mining/Lining of Vertical Shaft, E1 and E2 Inlined Tunnels and T1 Connector Tunnel & Construction of a Ventilation Building and Station Entrance Structure

Re: Site J Water Test

Dear Mr. Steplen:

As per the telephone conversation with Ali Catik today, you are hereby directed to flood test the E1 tunnel. You can start with the top-most Panel #13 and work your way downwards to Panel #11. This water test must be done on Friday, July 19, 2013.

Your project work will not be accepted until you satisfy the Chief Engineer and Code Compliance regarding the use of shotcrete. Attached is a copy of the Stop Work Order for your information.

If you have any questions, feel free to contact me at (646) 252-8930.

Sincerely,
MTA CAPITAL CONSTRUCTION COMPANY



Ramesh Ramanathalah
Construction Manager

cc: M. Horodniceanu, S. Kildare, M. Schiffman, R. Martone, M. Rafat, S. Asquith, M. Mahmoud,
File

Attachment

The Agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

MTA, NYC TRANSIT, CPM
CODE COMPLIANCE OFFICE

STOP WORK ORDER

Date: July 17, 2013

To: Ron Pezlik, Program Manager, MTACC
Rameesh Ramanathalah, Construction Manager, MTACC
Paul Matthews, PB, Construction Manager, MTACC

From: Michael Lodespoto, Principal Code Enforcement Officer, Code Compliance

Re: Contract C-26505 Furnishing and Installing Finishes and Systems on
the 7 West Project -- Site J

Under the Administration and Enforcement of the NYS Uniform Fire Prevention
and Building Code as Authorized Under Part 1204 of Title 19 of NYCRR
MTA New York City Transit, a Construction Permit Agency
approved by the Secretary of State issues this STOP WORK ORDER

Please be advised that the Temporary Construction Permit issued for Contract C-26505 dated February 1, 2011 and extended on 7/3/2013 until October 1, 2013 has been withdrawn due construction taking place that was not in compliance with the design drawings for which the Temporary Construction Permit was issued.

Reasons why this Stop Work Order was issued:

1. Shotcrete (pneumatically applied concrete) was used in an overhead application on the arches located above escalators E1 and E2. This method is not what was specified in the signed drawings for which the Temporary Construction Permit was issued. A plan to address Code concerns was developed at a July 1, 2013 meeting and has been discussed and documented subsequently. This plan must be completed and the results must be acceptable to the required parties at NYCT.
2. Significant amounts of water leaks have been observed. Water infiltration issue must be addressed.

All work at Site J taking place under the systems and finishes contract, C-26505, shall cease immediately. Work shall not commence until the conditions specified in the attached letter are complied with to the satisfaction of NYCT.

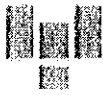

Code Enforcement Officer

7/17/13
Date

cc:

Mohammad Baalbaki (NYCT/MoW), John Barkaus (NYCT/CPM), Mark Blenstock (NYCT/CPM),
Anthony Cassella (NYCT/MoW), Gracelda Cespedes (NYCT/CPM), Shawn Kildare (MTA CCC),
Michael Kyriacou (MTA CCC), Joe Leader (NYCT/Subways), Frank Mondello (NYCT/CPM),
Ken Mooney (NYCT/MoW), Madan Nalk (NYCT/CPM), Seymour Portes (NYCT/CPM),
Fred Smith (NYCT/CPM)

EXHIBIT “3”



Yonkers Contracting Company, Inc.

Building Quality for Over 50 Years 969 Midland Avenue Yonkers, NY 10704 Tel 914.965.1500 Fax 914.378.8880

FOR SETTLEMENT PURPOSES ONLY

Mr. Tony Federico
Superior Gunitite
12306 Van Nuys Blvd.
Lake View Terrace, CA 91342

August 7, 2013

Re: **MTACC Contract C-26510 - Site J**
Superior Closeout Overview

Dear Tony:

Now that the Project has wound down, I thought it wise that I should send to you a summary of where Yonkers is with regard to payments and issues. Therefore, in the interest of closing out our Site J Project, Yonkers Contracting Co., Inc. (YCC) is writing to you to further clarify and explain its position relating to the final adjustments to your subcontract and any balances that may be owing or due. In this letter, YCC will provide a detailed narrative of the Superior Gunitite Closeout Analysis Sheet dated 8/7/13, a copy of which is attached.

Base Contract

YCC entered into a subcontract agreement with Superior Gunitite for a "Complete Shotcrete Package" on March 3, 2011. The original amount of the subcontract was \$7,500,000. The scope of work included the Excavation/Mining/Lining of Vertical Shaft, E1, E2 Inclined Tunnels, T1 Connector Tunnel, and the Construction of a Ventilation Building and Station Entrance Structure at Site J in New York, NY.

Base Contract Inclusions

The following is an excerpt from Superior Gunitite's subcontract that clarifies and emphasizes what was included in Superior Gunitite's scope of work:

The following items are specifically included in this Subcontract. However, this list is not meant to be all inclusive or to limit subcontractor's scope or requirements in any way. Any item not identified, but necessary for a "Complete Placement of Shotcrete" shall be deemed included and required as if listed below:

- *All work to be as Specified, Outlined, Shown, or reasonably inferred from the Contract Plans, and applicable Specifications.*
- *Scope of work includes attending a project kick-off meeting. Contractor shall provide Productive Mobilizations/Pour Shifts.*
- *Furnish all labor, material, equipment, and supervision to place the shotcrete as shown in the contract documents and as per the agreed upon scope of work as listed below;*
 - *All 4" thick Sand Walls excluding mesh and anchors, any additional material needed in excess of the 4" design thickness shall be provided at \$374 per CY.*
 - *Walls and arches at the inclined tunnels @ E1 and E2, excluding scaffold.*
 - *Arched walls for the Shaft at the T1 Connector Tunnel, 1'-6" to 3'-0" thick, including Hi Rib Expanded Metal Panel backforming and Fixed Frame Scaffolding.*
 - *Outer and Interior Walls at the B3 Level, 1'-0" to 3'-0" thick, including Hi Rib Expanded Metal Panel backforming and Fixed Frame and Rolling Jumbo Scaffolding.*
 - *Outer and Interior Walls at the B2 Levels, 1'-6" to 3'-0" thick, including Fixed Frame and Rolling Jumbo Scaffolding.*
 - *Outer and Interior Walls at the B1 Levels, 1'-6" to 3'-0" thick, including Fixed Frame and Rolling Jumbo Scaffolding.*
 - *Shear Wall at Line E, 4'-0" thick, including Hi Rib Expanded Metal Panel backforming and Fixed Frame and Rolling Jumbo Scaffolding.*
 - *Shear Wall at Elevations 64.6 to 77.5, 1'-0" thick including Hi Rib Expanded Metal Panel backforming and Fixed Frame and Rolling Jumbo Scaffolding.*
 - *Concrete Walls at the Inclined Tunnels, T1 Connector and Shafts, 8" thick, Fixed Frame and Rolling Jumbo Scaffolding.*
 - *Concrete walls at the Inclined Tunnels, T1 Connector and Shafts, 8" thick, Fixed Frame and Rolling Jumbo Scaffolding, but excluding backforming.*
 - *Concrete Outer Walls at various areas, 5'-0" to 6'-0" thick, including Hi Rib Expanded Metal Panel and Fixed Frame and Rolling Jumbo Scaffolding.*
 - *Work includes installation only of RF waterstop Pour Joints, at smooth tooled interfaces.*
 - *Scope of work includes the furnishing of all Shotcrete and Concrete material.*
 - *Scope of work includes a preconstruction test panel, plaster jack, overspray protection or scraping of adjacent surfaces, rubber float finish/flex trowel finish at Sand Walls, slab dowel protection, air cleaning of steel at the top of walls, curing compound, and rebound cleaning, if required.*
 - *Scope of Work includes finishing of all placed surfaces as approved in the approved Mock-Up.*

- *Any and all waste concrete and material necessary to perform this subcontract shall be neatly placed within the site area for removal by the Contractor.*
- *Includes repair to any damaged or insufficient concrete placement within this subcontract which is deemed the inadequate or damaged at the fault of the subcontractor.*
- *The Contractor shall supply adequate and mutually agreed upon access and staging areas, 400 cfm air supply, and a full time oiler.*

Base Contract Exclusions

Excluded from this Subcontract are the following items only:

- *Scaffolding/Manlifts/Rolling Travelers for installation where not specifically included within the scope of work above.*
- *Temporary water supply*
- *Temporary power*
- *Sanitary Facilities*
- *Washout Boxes*
- *Layout/Control Points*
- *Signs/Barricades/Traffic and Pedestrian Control*
- *Protection beyond the top of the wall and immediate adjacent areas*
- *Sandblasting of Joints*
- *Footings*
- *Utility Blockouts*
- *Steel Reinforcement/Embedded Material/Miscellaneous Metals*
- *Inspections/Testing/Permits/Test Sampling*
- *Dust Control*
- *Noise and Environmental Protection/E.S.A. Protection*
- *Bond*
- *8" Thick Walls @ Level B1*
- *E1 & E2 Inclined Tunnels Escalator Pit Walls*
- *Freestanding Columns*
- *PVC Water Stop Joints*

Project Schedule

As you are aware, the contract gave us a very limited time in which to complete the work. As a result, and as you well know, the Site J Contract Schedule was very aggressive from the start. The subcontract language was overly plain that all costs associated with maintaining this aggressive schedule are included in Superior Gunite's price. Superior Gunite's obligations to accelerate were viewed as a result of its "causing" delay, as it was a basic obligation of Superior Gunite to keep moving with a fast moving Project that they could have performed in a 40-hour

work week if they manned the job properly. Indeed, due to SG's lack of experienced Shotcrete manpower it was recognized that the aggressive schedule could only be met by Yonkers and other trades working multiple shifts and weekends.

Superior Gunitite was obligated to comply with the Contract Project Milestones and Completion Dates or face severe consequences as specifically outlined and agreed to in the following excerpts of Superior Gunitite's Agreement relating to schedule:

Paragraph 1.1: *The Subcontractor has read and is familiar with the Prime Contract and the Contract Documents which are expressly incorporated by reference herein. The Subcontractor is bound unto the Contractor by the terms of the said Contract Documents and will conform to and comply with it and assume toward the Contractor all the Obligations and responsibilities that the Contractor assumes in and by the Contract Documents insofar as they are applicable to this particular Agreement.*

Paragraph 5.1: *Time is of the essence in the performance of this Agreement and the Subcontractor's promised performance according to the project schedule is part of this Agreement and is directly reflected in the Subcontract Price. The Subcontractor shall commence Work within seven (7) days after being sent a notice to proceed from Contractor and shall progress its Work so as not to delay or interfere the Contractor in any of its operations and shall proceed in such order and sequence as the Contractor may direct so as to enable the Contractor to complete its work within the time limits specified in the Prime Contractor as the same may be extended.*

Paragraph 5.2: *Subcontractor represents that it has reviewed and accepts the applicable project schedule and all revisions thereto, as required under the terms of the Prime Contract. The Subcontractor agrees and understands that any such project schedule is incorporated by reference in this Subcontract and further acknowledges that its failure to adhere to any such project schedule will expose Contractor to severe financial hardship. Accordingly, Subcontractor agrees to exonerate, indemnify and hold Contractor harmless from and against any and all losses, damages and claims arising out of Subcontractor's failure to adhere to any project schedule or any modifications, updates or revisions thereto. The Subcontractor's failure to adhere to and maintain the project schedule, including any revisions thereto, shall be grounds for terminating this Agreement.*

Paragraph 5.4: *Subcontractor shall increase workforce and work overtime, Saturdays or Sundays, without additional compensation, if, in the judgment of Contractor, such additional workforce, overtime and Saturday or Sunday work is necessary in order to maintain the project schedule due to delays attributable to, or caused by, Subcontractor.*

The following excerpts from the Prime Contract Documents relating to Time and Commencement of Work are incorporated into the Subcontract Agreement by reference:

Article 2.01 Time For Commencement and Completion of Work

Intermediate Milestones and Substantial Completion:

(The original Contract Milestones were eliminated by the MTA in March 2012. The revised dates required a "Building Watertight" Milestone of December 12, 2012 and a Revised Substantial Completion Date of May 30, 2013)

Intermediate Milestone 1 (October 13, 2011) – Eliminated by MTA in March 2012

Complete and turn over to the Engineer the following work no later than Twelve (12) months after Notice of Award (NOA) in accordance with the Contract Documents:

- *All work from B-5 Level to Street Level including the Street Level floor slab between Column Lines E to I and Column Lines 4 to 7. The Work also includes the Incline Tunnel E2 and an access hatch at the plaza roof slab.*
- *Entire Shear wall at Column Line E.*
- *North Wall between Column Lines E to I at Column Line 7.*

Complete and turn over the Building Structure between Column lines E to I and 4 to 7 to the Engineer. This area will be used by the other contractor employed by the Authority for finishes and systems work in the 34th Street Station-Contract C-26505. Coordination with this contractor will be required.

Intermediate Milestone 2 (May 12, 2012) – Eliminated by MTA in March 2012

Complete all Work between Column Lines O-E (including all walls, columns, floors, and plaza roof slab from below grade to Elevation 126+/-) and Inclined Tunnel E1 and turn the area over to the Engineer, Nineteen (19) Months after the Notice of Award (NOA), as required by the Contract Documents. This area will be used by the other contractors employed by the Authority for finishes and systems work in the Site J Systems Building and Station Entrance (Contract C-26505). Coordination with these contractors will be required.

Substantial Completion: (Original Date: December 12, 2012 • Modified to: May 30, 2013 with a supplemental Intermediate Milestone 3 requiring the building to be watertight by December 12, 2012)

The Contractor shall complete all work to achieve Substantial Completion as defined in Article 2.02 Twenty-six (26) months after Notice of Award (NOA).

The Revised Milestone Dates provided Relief to Superior Gunite

YCC held weekly Project Meetings on-site with its subcontractors. Superior Gunite Superintendent - Mr. Nick Hacopian and General Foremen - Jesse Chavez, Ruben Paz, and others regularly attended these meetings. The Subcontractor Meeting Agenda focused on the work at hand that week, and also two weeks and six weeks out per the Look-Ahead Schedules that were emailed and handed out and reviewed at the meetings. The meetings focused on the required shift and weekend work and the coordination between subcontractors and YCC. Short term schedule goals and the overall Project Schedule were clearly discussed at these meetings. At the meetings we would review the status of work for a subcontractor, including a look at whether or not each subcontractor was on schedule or falling behind. Unfortunately, as the Milestone dates approached it was plain to all that Superior Gunite's concrete work kept falling farther and farther behind schedule.

By mid-2011 it became apparent that, in spite of Yonkers and its subcontractors working shifts and weekends, the Milestones could not be met. Yonkers met with the MTA and eventually obtained relief by elimination of the Intermediate Milestones and extension of Substantial Completion date. However, in exchange for the elimination of the intermediate Milestones, the MTA insisted that YCC turn over all concrete work plus a "watertight" building by December 12, 2012. The revised dates provided Yonkers and its subcontractors with approximately 5 months of relief against Liquidated Damages. However, even with this Schedule relief, YCC, Superior Gunite and other subcontractors had no choice but to maintain the fast pace in order to complete the concrete work from east to west and then to the top of the ventilation building. The concrete work was sequential due to site logistics, which mandated that the fast pace had to be maintained right through to the end. Superior Gunite actually completed its concrete work on September 30, 2012, giving Yonkers just enough time to continue with the balance of the Street Level Deck and to complete work on the Ventilation Building.

Executed Amendments

Executed Amendment#1 Overbreak and Amendment#2 Pre-Sandwall Extra & Contract Deletions

YCC has issued executed amendments to SG's contract in the total amount of \$1,150,813 for additional work. Amendment #1 in the amount of \$674,813 was to "liquidate and settle all claims for overbreak in the rock as of May 31, 2012, whether submitted or not." This amendment covered the additional shotcrete thickness required for shotcrete sandwalls, also known as the "concrete smoothing layer," over the rock to fill in overexcavated rock cuts or "overbreak" back to neat lines (back face of concrete) in preparation of waterproofing. Amendment #2 in the net amount of \$476,000 was issued for pre-sandwalls and contract deletions. Pre-sandwalls were required when the overexcavation or "overbreak" was so great that the sandwall concrete thickness build up could not be accomplished in one shift and SG found that an additional shift

or shifts were required to build the shotcrete smoothing layer or sand wall out to the neat line. Contract deletions or credits were taken from SG for not furnishing or erecting their own scaffold, credit for SG not backforming structural walls, the elimination of 8" shaft walls and for contract non-sandwall credits. Superior Gunite's Amended Contract amount was **\$8,650,813**.

Superior Gunite's deleted amounts are grossly understated

The following three items were originally in SG's scope. Due to the aforementioned schedule issues, YCC had no choice but to delete the items from SG's subcontract because SG was unable to adequately man the Site J Project during normal working hours (weekdays between 7am-3:30pm). In the best interest of the Project and the Schedule, YCC chose to have certain SG work performed by others. Superior Gunite never provided an adequate credit on the item. YCC very fairly based its credit calculation on unit pricing that was prepared by SG to price the Project and which SG forwarded to YCC.

COR#17-Delete 8" Shaft Walls

YCC elected to delete the remainder of 8" interior vertical shaft partition walls from SG's subcontract. Again, this was due to SG's inability to consistently man the Project during normal working hours. SG provided YCC only a partial credit of (\$85,156) equaling \$231.40/cy. YCC calculated a fair credit based on SG's unit prices provided to YCC for the contract work. Using SG's unit prices YCC calculated a credit of (\$228,200) based on a total of 368 cy of 8" walls eliminated at \$800/cy or \$303,200, less a \$75,000 credit already provided by SG in amendment #2 for a total credit of (\$ 228,200).

12" Walls Deleted From Scope at B2 Level

YCC elected to delete interior 12" partition walls at B2 Level from SG's scope. Again, this was due to SG's inability to consistently man the Project during normal working hours. A total quantity of 108cy of 12" walls was deleted. SG failed to provide YCC a credit. Using SG's unit prices provided to YCC, a credit of \$600/cy or (\$64,800) was calculated by YCC for this reduction in scope.

Grid Line 2 Wall at B1 Level

YCC elected to delete the Grid Line 2 exterior wall at B1 Level from SG's scope. Again, this was due to SG's inadequate levels of manpower issues during normal work hours to meet the aggressive schedule. A total quantity of 243cy of walls was deleted. SG failed to provide YCC a credit. Using SG's unit prices provided to YCC, a credit of \$600/cy or (\$145,800) was calculated by YCC for this reduction in scope.

SG Premium Time Extra Work Requests-Rejected by YCC

SG had numerous jobs in the city at the time of this Project and was experiencing a shortage of qualified shotcrete crews and wiremen. SG could not keep up with the work and could not man the Site J project during normal working hours (weekdays 7am-3:30pm) as required by the aggressive schedule so SG elected to work second shift or offshift on Site J with wiremen they had from other projects. The wiremen would work on another project on 1st shift and come to Site J on 2nd shift to wire pours for a SG shotcrete crew the next day. The wireman's job was to set up piano wires on the rebar to be used as neat finish lines for placement of the shotcrete. SG shotcrete crews were also extremely busy on other projects, so SG would take crews from other projects and work weekends in attempt to keep up with the aggressive Site J schedule.

To make the problem even worse, SG only has a handful of Certified Nozzlemen qualified to work on the MTA projects in the New York City. SG is now claiming the premium portion of the weekend work to be paid for by YCC. SG is also charging YCC for off-shift and weekend concrete plant opening charges from Empire Transit Mix. Empire Transit Mix was SG's ready-mix concrete supplier on Site J. YCC rejects these claims since SG simply could not supply Site J with the needed wireman and shotcrete crews on a regular basis during normal working hours (weekdays 7 am-3:30pm). Due to its own qualified manpower shortage SG simply was not able to work this Project on regular shifts and went to second shifts for two reasons. Reason One - SG could not find Certified Nozzleman to work the first shift because they were working on other projects for SG. Reason Two - the second shift work was required merely to support the Project Schedule.

In addition, YCC rejects these claims based on Paragraph 5.4 of the Subcontract Agreement which states "*Subcontractor shall increase workforce and work overtime, Saturdays or Sundays, without additional compensation, if, in the judgment of Contractor, such additional workforce, overtime and Saturday or Sunday work is necessary in order to maintain the project schedule due to delays attributable to, or caused by, Subcontractor*".

This request is rejected.

COR 13.4 Premium Time on 6/16/12

SG submitted an extra work request for premium time for one crew working 9 hrs and concrete plant opening associated with working on the 1-Line at B1 Level on Saturday, June 16, 2012. SG's extra work request of \$8474.77 (with no mark up) is denied because SG could not adequately man the Project properly during the week due to its commitments to other projects. Therefore, SG chose to work on premium time to keep up with the necessary progress of the Project due to this SG issue. This request is rejected.

Further, as per **Paragraph 5.4**, "*Subcontractor shall increase workforce and work overtime, Saturdays or Sundays, without additional compensation, if, in the judgment of Contractor, such additional workforce, overtime and Saturday or Sunday work is necessary in order to maintain the project schedule due to delays attributable to, or caused by, Subcontractor*".

It is SG's responsibility to work whatever time necessary to maintain the Project schedule as written in the subcontract agreement with YCC. In addition, due to SG's heavy work load at the time of this Project, SG's shotcrete crews were not available during the week so SG elected to work weekends when work crews were available from other projects. SG did not have enough qualified wireman and shotcrete crews to keep up with their workload. YCC will not pay any of these costs.

COR 14.5 Premium Time on 7/14/12

SG submitted an extra work request for premium time; two crews working 9.5 hours and 11.5 hours respectively and a concrete plant opening charge associated with working on the E-Line at B2 Level on Saturday, July 14, 2012. SG 's extra work request of \$22,005 (with no mark up) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project Schedule as per **Paragraph 5.4** of the subcontract agreement. In addition, due to SG's heavy work load at the time, SG's shotcrete crews were not available during the week so SG elected to work weekends when work crews were available from other projects. This request is rejected.

COR14.6 Premium Time on 7/21/12

SG submitted an extra work request for premium time for two crews working 11.5 hours and concrete plant openings associated with working on the E2 Incline, Pours #9 and #15 at B2 Level on Saturday, July 21, 2012. SG's extra work request of \$32,272 (with 15% mark up) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project Schedule as written in the subcontract agreement with YCC. In addition, SG's work crews were not available during the week and in order to continue the work, SG elected to work weekends when work crews were available from other projects. This request is rejected.

COR 14.8 Premium Time for wiring on 7/20/12

SG submitted an extra work request for premium time for 3 wiremen working 8 hours associated with working on the E2 Incline, Pours #9 and #15 at B2 Level on Friday, July 20, 2012. The wiremen string piano wires on the reinforcing bars to establish the concrete limits (thickness and limits) while placing the pneumatically applied concrete. SG had many on-going projects in the area at this time and a limited number of wiremen. SG's extra work request of \$3352.19 (with 15% markup) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project Schedule as written in the subcontract agreement with YCC. In addition, SG's wiring crews were not available during the 1st shift weekdays since they were working on

other projects. In order to progress the work to maintain the schedule, SG elected to work 2nd shift when wire crews were available from other projects. This request is rejected.

COR 14.9 Premium Time for wiring on 7/23/12

SG submitted an extra work request for premium time for 1 wiremen working 8 hours overtime and one Superintendent working 2 hours straight time associated with working on the E2 Incline Pour #15 and E2 incline Pour #14 on Monday, July 23, 2012. SG's extra work request of \$1558.71 (with 15% markup) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project Schedule as written in the subcontract agreement with YCC. In addition, SG's wiring crews were not available during the 1st shift weekdays since they were working on other projects. In order to progress the work to maintain the schedule, SG elected to work 2nd shift when wire crews were available from other projects. This request is rejected.

COR 14.10 Premium Time for wiring on 7/24/12

SG submitted an extra work request for premium time for 3 wiremen working 3.5 hours overtime associated with working on the E-Line Wall between Lines 3 and 4 from B2 to B1 and the E2 Incline Tunnel Ceiling Pour #10 on Tuesday, July 24, 2012. SG's extra work request of \$1558.71 (with 15% markup) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project Schedule as written in the subcontract agreement. SG's wiring crews were not available during 1st shift weekdays since they were working on other projects. In order to progress the work and to maintain the schedule, SG elected to work 2nd shift when wire crews were available from other projects. This request is rejected.

4.13 Premium Time for wiring on 7/28/12

SG submitted an extra work request for premium time for 2 shotcrete crews working 10 hours on an unspecified area of work on Saturday, July 28, 2012. SG's extra work request of \$22,632.08(with no mark up) is denied because it is SG's responsibility to work whatever time necessary to maintain the project schedule as written in the subcontract agreement. In order to progress the work to maintain the schedule, SG elected to work Saturday when work crews were available from other projects. This request is rejected.

COR 14.14 Premium Time for wiring on 7/31/12

SG submitted an extra work request for 1 shotcrete crew working premium time on the E-Line wall from El.112.08 to El. 125 above the E2 tunnel on Tuesday, July 31, 2012. SG's extra work request of \$2529.77(with 15% mark up) is denied because it is SG's responsibility to work whatever time necessary to maintain the project schedule as written in the subcontract agreement. In order to progress the work to maintain the schedule, weekdays and in order to progress the work to maintain the schedule. SG elected to work overtime when wire crews were available from other projects. This request is rejected.

COR 14.15 Premium Time for wiring on 7/29/12

SG submitted an extra work request for premium time for 1 wireman working 6 hours on the E-Line Wall at B1 Level on Sunday, July 29, 2012. SG's extra work request of \$377.54(with no mark up) is denied because it is SG's responsibility to work whatever time necessary to maintain the project schedule as written in the subcontract agreement. In order to progress the work to maintain the schedule, SG elected to work Sunday when wire crews were available from other projects. This request is rejected.

COR 14.16 Premium Time on 7/25/12

SG submitted an extra work request for premium time for one wireman working 6 hours associated with working on the E Line Wall from El. 82.50 to El. 97.75 above the E1 Tunnel on second shift Wednesday, July 25, 2012. SG's extra work request of \$377.54(with no mark up) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project Schedule as written in the subcontract agreement with YCC. In addition, SG's wiring crews were not available during the 1st shift weekdays since they were working on other projects. In order to progress the work to maintain the schedule, SG elected to work 2nd shift when wire crews were available from other projects. This request is rejected.

COR 15.2 Premium Time on 8/4/12

SG submitted an extra work request for premium time of two crews working 11 hours and concrete plant opening associated with working on the Vent Shaft (Lift 7, Pour 3 and E2 Tunnel Arch Pour 12 on Saturday, August 4, 2012. SG's extra work request of \$30,325 (with 15% markup) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project Schedule as written in the subcontract agreement with YCC. In addition, SG's work crews were not available during the week and in order to continue the work, SG elected to work weekends when work crews were available from other projects. This request is rejected.

COR 15.4 Premium Time on 8/11/12

SG submitted an extra work request for premium time of two crews working 11 hours and concrete plant opening associated with working on the Vent Shaft (North and West from El. 77.50 to El. 97.75) and E1 Tunnel Arch Pour 13B on Saturday, August 11, 2012. SG's extra work request of \$29,619 (with 15% markup) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project schedule as written in the subcontract agreement with YCC. In addition, SG's work crews were not available during the week and in order to continue the work, SG elected to work weekends when work crews were available from other projects. This request is rejected.

COR 15.8 Premium Time and Standby on 8/25/12

SG submitted an extra work request for premium time for 1 Superintendent and 1 wireman working 4 hours of standby time and 6 hours of premium time on the 8 inch interior wall in E1 tunnel on Saturday, August 25, 2012. SG's extra work request of \$1438.77 (with 15% markup) is denied because it is SG's responsibility to work whatever time necessary to maintain the Project Schedule as written in the subcontract agreement. In attempt to progress the work to maintain the schedule, SG elected to work Saturday when wire crews were available from other projects. SG claims the wall was not ready for wiring when the crews came in that day of 1st shift and SG crews had to come back 2nd shift to wire the wall. YCC disagrees that the wall was not ready and that the wall could have been started on first shift. This request is rejected.

COR 16.02 shooting 8" wall on B5 level in the T1 connector on overtime, Tuesday September 25, 2012

SG submitted a revised extra work request for working overtime on above mentioned area in the amount of \$0.00. YCC agrees with the no cost change order.

Claimed Extra work: SG Change Order Requests or COR's – Requires Back-up from SG

YCC may consider the following CORs **pending proper backup from SG** of these CORs as was provided in all other SG CORs:

Pre –sand Walls-See COR 12.....	\$83,437
COR12.1 Backforming on 5/22/12-Wall at 2-line and E-line.....	\$10,600
COR12.2 Overbreak of 5.13 cy.....	\$1924
COR12.3 Sandwalls of May after Closeout at \$15/sf.....	\$32,100
COR13.1 Sandwalls on 6/4/12.....	\$20,775
COR13.3 Sandwalls on 6/6/12.....	\$23,840
COR13.6 E1 Tunnel Fill-ins 6/7/12.....	\$6,300
COR13.7 Non-Contract Work-B2 Slab.....	\$21,600
COR14.4 Non-Contract Work –B3 Slab.....	\$33,050
COR14.7 Sand Wall on 1-Line above Vent Shaft.....	\$8553
COR 14.11 Non-Contract work B2 Slab.....	\$1559
COR 14.11b Cancellation of shotcrete due to wall not being ready on 7/20.....	\$2055
COR 14.12 Sand Wall on B-Line above Vent Shaft.....	\$6112
COR 15.3 Sand Walls on 1-Line above Vent Shaft.....	\$4975
COR 15.7 Sand Walls along 1-Line and A-Line.....	\$15,970
COR 15.9 Backfill on Forms.....	\$15,255
COR 15.10 Non-Contract Work-B1 Intermediate Slab.....	\$8,400
COR 15.11 B2 Inner-Slab.....	\$12,428
COR 16.01.....	\$1574
Total	\$310,507

Claimed Extra work: SG Change Order Requests or COR's– Not Agreed to By YCC

The following SG COR's have been rejected by YCC:

COR 13.5 Structural Walls in E2 Incline Tunnel Pit

SG submitted COR 13.5 for the shotcreting of pit walls in Incline tunnel E2 on Tuesday June 26, 2012 for 142 cy of concrete at the unit price of \$465/cy for a total of \$65,100. Pit walls are excluded from SG's scope. However, a review of SG quantities by YCC shows that these walls were, in fact, included in SG's quantities and original contract price. Therefore, SG's COR13.5 is rejected by YCC.

COR 14.1 Structural Walls in E1 Tunnel Pit

SG submitted COR 14.1 for the shotcreting of pit walls in Incline tunnel E1 on Tuesday July 5, 2012 for 140 cy of concrete at the unit price of \$465/cy for a total of \$68,163. Pit walls are excluded from SG's scope. However, a review of SG quantities by YCC shows that these walls were also included in SG's quantities and contract price. Therefore, SG's COR14.1 is rejected by YCC. This request is rejected.

COR 14.3 Plant Charges for Swing Shift on 7/11

SG submitted COR 14.3 for the plant opening charges associated with shotcreting of shaft Lift 4 Pour #3 on swing shift or second shift Wednesday July 11, 2012, for a total of \$8,341. YCC is denying these plant opening charges because, as discussed above in detail, SG simply could not supply a first shift crew on that day, so SG opted to work a second shift instead. Therefore SG's COR 14.1 is rejected by YCC. This request is rejected.

COR 15.1 Swing Shift Concrete on 8/01

SG submitted COR 15.1 for the plant opening charges and trucks on a 10 hour swing shift associated with shotcreting of E-line wall from El. 112.08 to El. 125 above the E1 tunnel on Wednesday August 1, 2012, for a total of \$3,875. YCC is denying these plant opening charges because SG simply could not supply a first shift crew on that day, so SG opted to work a second shift instead. Therefore SG's COR 15.1 is rejected by YCC.

COR 15.5 Delay due to Denied Access on 8/17

SG submitted COR 15.5 for the costs of one load of concrete and for 6.5 hours of crew time lost due to denied access at the 33rd street "Jacob Javits" gate between 11th and 12th Avenue for a total of \$9843. YCC rejects SG's charges in this COR since YCC never had control of this gate, which is operated by The Jacob Javits Center and cannot be held responsible for access to the

site using this entrance. YCC had permission from the Jacob Javits Center to use this access, but it was not permitted by the contract documents. It was made clear by YCC to all subcontractors that although YCC and its subcontractors had this access, it was not guaranteed or provided for in the contract drawings and could be revoked by the Jacob Javits Center at any time. This request is rejected.

COR 15.6 Standby due to wall not being ready

SG submitted COR 15.6 for the costs of half a day of production due to certain walls allegedly not being ready by YCC in the amount of \$5334. Walls are ready for SG when all the rebar and waterproofing has been completed and inspected. SG then wires the wall to get it ready for shotcrete crews. YCC rejects SG's charges because YCC never guaranteed SG minimum concrete pour volumes. Minimum production volumes are not mentioned in SG's subcontract. This request is rejected.

YCC Backcharges

Superior Gunite's scope of work and contractual obligations are clearly stated in the subcontract agreement. Unfortunately, due to SG's insufficient manpower, they walked away from many of their obligations leaving YCC no choice but to perform the work with its own forces and backcharge SG for the cost. YCC tracked those costs and charged SG very fairly for performing their work. Markup was not charged. Clearly, half of the backcharges were for the cost of cleaning up the significant Shotcrete "rebound" that was left by SG where it originally landed. With very few exceptions, SG simply walked from this responsibility and moved the manpower to another project. Other valid backcharges included damages by SG to YCC's equipment, installation of waterstop included in SG's subcontract and a fair pro-rata portion of YCC's cost of delay due to SG's insufficient manpower

Various Man-Lift Repairs (Hertz, SunBelt, and United Equipment)

As per the Subcontract Agreement, YCC provided *"scaffolding/manlifts/rolling travelers for installation where not specifically included within the scope of work above"* to SG. However, SG did not adequately protect the rented manlifts from damage by shotcrete overspray and rebound. SG should have protected the equipment by wrapping or covering the machines with plastic, tarps, etc. YCC incurred charges totaling \$51,133 for repair and cleaning of the machines due to SG's negligence.

Labor Costs for YCC Installing Waterstop at Various Locations

In the inclusions contained in the subcontract agreement, SG based its proposal on the use of "RF" waterstops ("work includes installation only of RF waterstop Pour joints, at smooth tooled interfaces"). Note that RF waterstop is made of PVC. RF was determined to be an unacceptable application for the contract "dumbbell" waterstop. Since SG was not signatory to the carpenters union, and under a field substitution agreement between YCC and SG, rather than use the RF

waterstop, YCC initially hung a PVC waterstop for SG and SG expected to “hand-tool” an integral keyway on either side of the waterstop. SG’s hand-tooled approach was not accepted by the MTA which forced SG to form a keyway and install the waterstop. Again, since SG was not signatory to the carpenters union, YCC was forced to install the contract joints for SG. YCC incurred costs of \$445,000 for furnishing and installing the keyway and waterstop at all pour joints which is included in SG’s Scope of Work. The substitution of dumbbell waterstops for RF waterstops is an equivalent charge as is the substitution of a formed keyway for tooled keyway. Therefore, the entire YCC backcharge is taken.

Total Shotcrete Cleanup (Labor and Material)

YCC incurred costs of \$606,162 for shotcrete rebound cleanup. SG’s subcontract states “*Any and all waste concrete and material necessary to perform this subcontract shall be neatly placed within the site area for removal by the Contractor.*” SG failed to contain the waste concrete and YCC, at great expense, provided its own labor crews to shovel the waste concrete up and dispose of it. SG did not shovel the waste concrete off scaffolds, equipment, floors, etc. properly for removal by YCC even after YCC provided SG with 1 cy nylon bags that were to be filled by SG and removed by YCC. In many instances, SG haphazardly filled the nylon bags with waste concrete on the ground between the scaffolding; thus “trapping” the bags between the scaffold frames. This necessitated the removal of the scaffold frames by YCC to remove the waste concrete bags.

Bulkheads (labor)

YCC incurred \$200,042 in costs for installing all wooden bulkheads between pours with its own forces. SG’s subcontract includes smooth-tooled interfaces. The MTA rejected the use of smooth tooled interfaces due to poor quality workmanship. Therefore, YCC was forced to install formed bulkheads to provide the end of wall pour stop or interface.

Required cleaning of shotcrete rebound off rented scaffolding by Harsco

YCC received scaffold cleaning invoices from Harsco in the amount of \$20,000. SG did not properly protect the rented scaffold by wrapping it with plastic tarps or other means from shotcrete overspray. Rented scaffolding used by SG was covered by shotcrete overspray. Harsco charged YCC for the cleaning costs of the scaffolding.

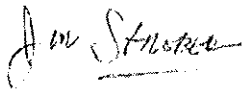
YCC Costs for Schedule Recovery

In order to mitigate time lost due to SG’s manpower delays, Yonkers worked multiple shifts. SG is responsible for \$432,261 in Schedule Recovery Costs. To be fair, only a 29-day allocation of the total 81 work days have been charged to SG at \$14,909 per day spanning from May 2012 through the end of August 2012.

Summary of Negotiations

Currently, YCC has offered Superior Gunitite a total Final Contract Revenue of \$6,771,980.
Please review the above information.

Very Truly Yours,
Yonkers Contracting Co., Inc.

A handwritten signature in dark ink, appearing to read "Jim Strobel", with a horizontal line underneath the name.

James Strobel
VP Construction

cc: JK, AC, RS, Mike McKenna
LTR to Superior Gunitite 00003 file

Site J
Superior Gunite Analysis

Item Description	SG Request	YCC Proposed	Comments
Base Contract	\$7,500,000	\$7,500,000	
Amendment #1: Overlureak	\$874,813	\$874,813	
Amendment #2: Pre Sandwall Extra & Contract Deletions	\$476,000	\$476,000	
Executed Amendments Total	\$1,350,813	\$1,350,813	
COR 17.00 Delete 8' Slab Walls (SG proposed credit)	-\$56,376	-\$228,200	YCC is not in agreement with total value of credit. 8' Walls Deleted from Scope (Slab - 186cy + 379cy @ 380 / cy = \$303.2k, 303.2k - \$73k (AMA2)
Delete 12' Walls Deleted from Scope at B1 Level	\$64,800	\$64,800	Superior Gunite did not provide a credit. 106cy @ 560 / cy = \$59,360
COR 17.02 Grid Line 2 Wall at B1 Level placed by Villa	-\$76,391	-\$145,800	Superior Gunite did not provide a credit. 243 cy @ 560 / cy = \$135,800
Deleted Contract Work Total	-\$181,547	-\$438,800	
COR 13.4 Premium Time on 6/16/2012 (back against actual hours)	\$8,474	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.5 Premium Time on 7/14/2012	\$22,005	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.6 Premium Time on 7/21/2012	\$31,272	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.8 Premium Time for wiring on 7/30/2012	\$1,352	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.9 Premium Time for wiring on 7/31/2012	\$1,558	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.10 Premium Time for wiring on 7/24/2012	\$2,095	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.13 Premium Time on 7/28/2012	\$2,632	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.14 Premium Time on 7/31/2012	\$2,259	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.15 Premium Time for wiring on 7/29/2012	\$177	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 14.16 Premium Time on 7/25/2012	\$5,112	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 15.4 Premium Time on 8/14/2012	\$27,968	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 15.8 Premium time and standby for wiring 8' wall	\$24,853	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
COR 16.22 8' wall on B5 Level in the 11 Connector on Evertime, Tuesday, September 25, 2012	\$1,571	\$0	Work performed on weekend required to maintain project schedule due to unavailable SG crews during week
Total Pending Premium Time	\$115,888	\$0	
Pre Sand Walls: See COR 12	\$35,463	\$35,463	YCC is pending on agreement due to missing backup on extra work claims
COR 12.1 Backforming on 5/7/7/2012 Wall at 2' Line and E-Line	\$9,280	\$9,280	YCC is pending on agreement due to missing backup on extra work claims
COR 12.2 Overbreak of 5' 12cy	\$17,073	\$17,073	YCC is pending on agreement due to missing backup on extra work claims
COR 12.3 Sand Walls of May after Close-out at \$15/sf	\$47,415	\$47,415	YCC is pending on agreement due to missing backup on extra work claims
COR 13.1 Sand Wall on 6/16/2012	\$2,512	\$2,512	YCC is pending on agreement due to missing backup on extra work claims
COR 13.3 Sand Wall on 6/9/2012	\$23,010	\$23,010	YCC is pending on agreement due to missing backup on extra work claims
COR 13.4 11' Tunnel Fill-ins 5/7/2012	\$6,190	\$6,190	YCC is pending on agreement due to missing backup on extra work claims
COR 13.7 Non-contract work - B1 SSB	\$21,600	\$21,600	YCC is pending on agreement due to missing backup on extra work claims
COR 14.4 Non-contract work - B1 SSB	\$23,806	\$23,806	YCC is pending on agreement due to missing backup on extra work claims
COR 14.7 Sand Wall on E Line above Vent Shaft	\$4,550	\$4,550	YCC is pending on agreement due to missing backup on extra work claims
COR 14.11 Non-contract work B1 SSB	\$4,550	\$4,550	YCC is pending on agreement due to missing backup on extra work claims
COR 14.11B Completion of Shotcrete due to wall not being ready on 7/70	\$13,530	\$13,530	YCC is pending on agreement due to missing backup on extra work claims
COR 15.1 Sand Wall on E Line above Vent Shaft	\$5,800	\$5,800	YCC is pending on agreement due to missing backup on extra work claims
COR 15.2 Sand Wall on E Line above Vent Shaft	\$18,810	\$18,810	YCC is pending on agreement due to missing backup on extra work claims
COR 15.9 Backfill on Form	\$15,735	\$15,735	YCC is pending on agreement due to missing backup on extra work claims
COR 15.10 Non contract work - B1 Intermediate SSB	\$8,400	\$8,400	YCC is pending on agreement due to missing backup on extra work claims
COR 15.11 B1 Inver-SAB	\$12,437	\$12,437	YCC is pending on agreement due to missing backup on extra work claims
COR 16.01	\$1,588	\$1,588	YCC is pending on agreement due to missing backup on extra work claims
COR 13.5 Non-contract work - Structural Wall in E2 Tunnel Pit (need to add backfilling if used)	\$66,030	\$0	E2 Pit Walls are excluded from contract however, SG's quantities include this item.
COR 14.3 Non-contract work - Structural Wall in E1 Tunnel Pit	\$75,368	\$0	E1 Pit Walls are excluded from contract however, SG's quantities include this item.
COR 16.3 Permit Charges for swing shift on 7/11	\$8,341	\$0	Plant opening charges denied due to inability to provide crew on day shift.
COR 15.3 Being Self Concrete	\$3,875	\$0	Work performed charges denied due to inability to provide crew on day shift.
COR 15.5 Delay due to denied access	\$3,843	\$0	YCC rejects claim, YCC not held responsible for delay
COR 15.6 Standby due to wall not being ready	\$5,333	\$0	YCC rejects claim of minimum available work
Claimed Extra Work Total	\$483,655	\$118,465	
Various Man-Lift Repairs (Herz, Sunbelt & United Equipment) - Various Invoices	\$0	-\$51,133	Damages to YCC provided man-lifts due to shotcrete rebound. Man-lifts not properly protected by SG.
Lower costs for YCC (Mailbox Waterstop @ various locations	\$0	-\$445,000	
Total Shotcrete Cleanup (Labor & Material)	\$0	-\$506,182	Waste concrete was not neatly placed within site area for removal by YCC
Ballheads (ASPO)	\$0	-\$200,042	
Required Leasing of Shotcrete rebound by YCC scaffolding for Herco	\$0	-\$20,000	Cost for cleaning of scaffolding due to shotcrete rebound
YCC costs for schedule recovery	\$0	-\$932,361	YCC costs for 79 work days spanning from May 2012 through the end of August 2012
YCC Backcharges Total	\$0	-\$1,754,688	
Superior Gunite Base Contract	\$7,500,000	\$7,500,000	
Superior Gunite Change Order	\$1,150,813	\$1,150,813	
Superior Gunite Contract Work	-\$181,547	-\$438,800	
Superior Gunite Premium Time	\$155,888	\$0	
Subtotal Pending Extra Work	\$483,655	\$118,465	
Subtotal YCC Backcharges	\$0	-\$1,754,688	
Total Final Contract Revenue Requested	\$9,128,609	\$6,771,980	
Total Grant Paid To Date	\$6,156,482	\$6,156,482	(Remaining at 10% + \$516,648)
Remaining Due	\$2,972,127	\$6,156,482	Pending receipt of backup to substantiate extra work claims

EXHIBIT “4”



December 10, 2013

MTA-SRJV-L-00799

Mr. Victor Paterno, Project Executive
SKANSKA/Railworks Joint Venture
519 Eighth Avenue, 14th Floor
New York, NY 10001

Re: **Contract C-26505: Furnishing and Installing Systems and Finishes, Number 7 (Flushing) Line Extension, "A" Division (IRT), Borough of Manhattan**

Subject: **High Rise Escalator Installation / Stop Work Order Rescinded**

Reference: **MTA-SRJV-L-00577, 00731, 00776 and 00780; and SRJV-MTA-L-01097**

Dear Mr. Paterno:

Effective immediately, the Stop Work Order (SWO) issued under MTA-SRJV-L-00577 and extended under MTA-SRJV-L-00731 is hereby rescinded. We are in receipt of your schedule fragnet for the High Rise Escalator installation work requested in our letter MTA-SRJV-L-00780. We believe the fragnet is in sufficient detail to allow work to progress while we continue to refine and develop the schedule. Accordingly, pursuant to SRJV's agreement to perform the Factory Acceptance Test (FAT) in the field at its sole risk and expense and agreement to hold MTACC harmless from any and all claims associated with this test, SRJV may proceed with the High Rise Escalator work. With respect to the schedule fragnet provided in your letter SRJV-MTA-L-01097, we will provide you with our comments to the schedule fragnet under separate cover.

In conjunction with performing the work, SRJV needs to coordinate with others, including C-26510 contractor, Yonkers Contracting Company, Inc.

If you have any questions on this matter, please contact me at 646-252-8345.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jimmy Ho'.

Jimmy Ho, P.E. CPM
Consultant Construction Manager
MTA Capital Construction

A handwritten signature in black ink, appearing to read 'Anthony DiFiore'.

Anthony DiFiore, P.E.
Program Manager
MTA Capital Construction

cc: M. Horodniceanu, S. Kildare, M. Schiffman, P. Matthews, R. Ramanathaiah, M. Rafat,
A. Dilancea, C. Lee

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company