

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

YONKERS CONTRACTING COMPANY INC.

Index No.: 61442/2014

Plaintiff,

-against-

K.J.C. WATERPROOFING INC. and SUPERIOR
GUNITE, ZURICH AMERICAN INSURANCE
COMPANY, NICHOLSON CONSTRUCTION CO., and
CITI STRUCTURE LLC,

Defendants.

**JUDICIAL SUBPOENA
DUCES TECUM**

THE PEOPLE OF THE STATE OF NEW YORK

TO: **METROPOLITAN TRANSIT AUTHORITY**
2 Broadway
New York, NY 10004-2207

GREETINGS:

***WE COMMAND YOU,** That all business and excuses being laid aside, to produce documents and other tangible things necessary to the prosecution of this action and that you produce at the time and place aforesaid for you to produce for discovery, inspection and copying, the documents listed on Schedule A annexed hereto and made a part hereof, on **December 20, 2015** at 10:00 o'clock, or at any recessed or adjourned date A.M, at the offices of Bahn, Multer LLP, 555 Fifth Avenue, 14th Floor, NY, NY 10017, and that you bring with you, and produce at the time and place aforesaid:*

SEE SCHEDULE A ATTACHED HERETO AND MADE A PART HEREOF

- 1. The subject matter of this matter and the documents concerns construction and other work done at Site J -- 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 located at 34th Street between**

**10th and 11th Avenues, in New York County, in New York, NY
(hereinafter referred to as the "Project"), pursuant to Contract
No.: C-26510 NYCTA. Additional documents concern Site A, Site P, Site
K, Site L.**

*Failure to comply with this subpoena is punishable as a contempt of
Court and shall make you liable to the person on whose behalf this subpoena
was issued for a penalty not to exceed fifty dollars and all damages sustained by
reason of your failure to comply.*

ENTER:

Hon. Alan D. Scheinkman, JSC

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

As used herein, unless the context otherwise requires:

1. “KJC” shall refer to defendant KJC Waterproofing, Inc., and all of its officers, directors, employees, partners, agents, or representatives acting within the scope of their actual, implied, or apparent authority.
2. “Gunite” shall refer to defendant Superior Gunite, and all of its officers, directors, employees, partners, agents, or representatives acting within the scope of their actual, implied, or apparent authority.
3. “Yonkers” shall refer to plaintiff Yonkers Contracting Company, Inc., and all of its officers, directors, employees, partners, agents, or representatives acting within the scope of their actual, implied, or apparent authority.
4. “Zurich” shall refer to defendant Zurich American Insurance Company, and all of their officers, directors, employees, partners, agents, or representatives acting within the scope of their actual, implied, or apparent authority.
5. “MTA” shall refer to the Metropolitan Transportation Authority.
6. “Site J Project” shall refer to the construction project that is the subject of this litigation, in which Yonkers, as contractor, entered into a contract with the Metropolitan Transportation Authority, as owner, to provide general contracting services, and in which Gunite and KJC each entered into a contract with Yonkers to provide subcontracting services relating to

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 under MTA Contract C-26510, generally located at the south side of the intersection of 34th Street and 11th Avenue, in New York, New York.

7. Site A, Site P, Site K and Site L refer to additional MTA project sites located north and south of Site J.

8. Leaks at the Site J Project **include, but are not limited to**, water leaks located at
- a) B1 level North Wall, various locations.
 - b) B1 Level East Wall, water leaks along the joint between the wall and the floor slab along the entire length of corridor and overflow of water puddles in the adjacent rooms
 - c) B1 Level South Wall, various locations of wall
 - d) E1 Inclined Tunnel, water leaks at top of arch, joint of North Wall and Invert slab, across of the invert slab at the bottom and at the utility chase.
 - e) E1 South Wall
 - f) E1 Utility Corridor, water leaks at invert slab for lower half of incline.
 - g) E1 Lower Mezzanine Level, water leaks at invert slab of B4 level
 - h) E2 Inclined Tunnel, water leaks at South Wall, joint of South Wall and Invert slab, top of arch and at the utility chase.
 - i) E2 Utility Corridor, water leaks at North Wall and invert Slab for lower half of the incline.

8. "Site J Contract" shall refer to the agreement entered into between Yonkers and the MTA, Contract No.: C-26510, on or around October 13, 2010, under which Yonkers was to provide general contracting services for the Site J Project.
9. "KJC Subcontract" shall refer to the subcontract entered into between Yonkers and KJC, under which KJC was to provide subcontracting services on behalf of Yonkers for the Site J Project.
10. "KJC Work" shall refer to the scope of KJC's work as described in the Site J Subcontract with Yonkers as well as all work orders, extra work claims, change orders, addendums, riders, attachments and amendments thereto.
11. "Gunitite Subcontract" shall refer to the subcontract entered into between Yonkers and Gunitite on or around March 3, 2011, under which Gunitite was to provide subcontracting services on behalf of Yonkers for the Site J Project
12. "Gunitite Work" shall refer to the scope of Gunitite's work as described in the Site J Subcontract with Yonkers as well as all work orders, extra work claims, change orders, addendums, riders, attachments and amendments thereto.
13. "Membrane Waterproofing System" shall refer to the waterproofing system described in Section 07130 of the Specifications for the Project.
14. "Person" shall refer to an individual, corporation, company, limited liability company, partnership, joint venture, trust, estate, proprietorship, association or other entity or group, whether or not operated for profit.
15. "Payment" shall refer to payments in cash, checks, bills, notes or other instruments, and also shall refer to payments in kind and payments in goods or works or equivalent value.
16. The term "referring or relating to" shall mean mentioning, reviewing, discussing, analyzing, concerning, describing, indicating, responding to, evidencing and/or constituting.

17. The terms “concerning” or “in connection with” shall mean mentioning, reviewing, discussing, analyzing, referring, relating, describing, indicating, responding to, evidencing and/or constituting.
18. The term “communication” shall mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise) verbally or by other means.
19. “Document” is used herein in the broadest sense of the term and means each and every writing of whatever nature, whether an original or a copy, including all documents with handwriting, whether in electronic format or in a paper form, however produced or reproduced and whether sent or received or neither. The term includes, but is not limited to all agreements, correspondence (letters, facsimiles, e-mails, e-mail attachments, telegrams, and other correspondence and all attachments or enclosures), telephone records, including those for land lines, facsimiles and cellular telephones, evaluations, reports (daily, weekly, monthly), statistical data or studies, notes or summaries of data, minutes or notes of meetings or conversations including telephonic, transcripts of meetings, contracts, sub-contracts, purchase orders, memoranda, resolutions, proposals, photographs, motion pictures, video tapes, audio tapes, recordings, directives, financial information, bank statements, accounts, reports, vouchers, invoices, bills, bill ledgers, notices, notifications, advices, diaries, logs, budgets, estimates, bid proposals, cost and/or income estimates or projections, costs/and or income calculations, acknowledgements, legal papers, complaints, notes, drafts, instruments, applications for payment, requisitions, change orders, extra work authorizations, additional work authorizations, blueprints, designs, plans, drawings, shop drawings, as-built drawings, specifications, details, field orders, field reports, progress schedules, scheduling reports, Critical Path Method (“CPM”) schedules, including all updates and reports, bar charts, graphs, cancelled checks, and payment

records, evaluations, samples, licenses, permits, applications, telegrams, computer printouts, or other recordings or mechanical reproductions from which information can be obtained, drafts of documents, and copies of documents which are not identical duplicates of the originals, including red-lined or compare copies of documents (e.g., where handwritten notes, addenda, editing marks or marginal comments appear thereon or are attached thereto), any material underlying, supporting, or used in the preparation thereof now or at any time in the possession, custody or control of the KJC or available to or known by it. **“Document” includes data stored electronically and digitized voice-mail in the possession of or under the control of the KJC including data maintained or stored in or on (i) data storage formats (such as CD-ROMS, DVDs, Floppy Diskettes), (ii) laptop computers, (iii) desktop computers, (iv) network servers, (v) archive servers, (vi) back-up tapes and (vii) unified messaging systems.**

20. “Identify,” when used in reference to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).
21. “Identify,” when used in reference to a natural person, means state his/her full name, present or last known home address, social security number and present or last known place of employment.
22. “Identify,” when used in reference to a corporation, partnership, or other business concern, location or facility, means state its full name and present or last known address.
23. “Identify,” when used in reference to a communication, means state the date, time and place at which it was transmitted and received, the parties who transmitted and received the communication and the individuals acting on their behalf, the media of the communication (e.g.,

face-to-face conversation, telephonic conversation, radio, etc.) and a true and complete description of the substance of the conversation.

24. "And" and "or" shall mean and/or as the context requires.

25. For all references herein, when gender is used, the masculine form will be taken to include the feminine and the singular form will be taken to include the plural.

DOCUMENTS TO BE PRODUCED

1. Documents (see definition above of documents, which include notes of individuals) by, from or to the MTA concerning **leaks** relating to
 - a. rebar installation
 - b. waterproofing installation
 - c. shotcrete installation
 - d. concrete Installation other than Shotcrete
 - e. Anchor Installation
2. Documents between MTA and Yonkers concerning leaks at the project not included in Item No.1 above.
3. Stop Work Orders issued by MTA concerning leaks at the project.
4. All MTA internal memorandum, reports, notices, internal and external emails and correspondence concerning leaks at the project.
5. Minutes of all meetings attended by the MTA or in the MTA's possession concerning leaks at the project.
6. All engineering reports prepared by or on behalf of the MTA concerning leaks at the project.

7. All inspection reports prepared by or on behalf of the MTA concerning leaks at the project.
8. All documents which evidence the amount requisitioned by Yonkers to the MTA for waterproofing work performed by KJC.
9. All documents which evidence the amount paid to by the MTA to Yonkers for waterproofing work performed by KJC.
10. Models and/or mock-ups reports of Site J prepared by or on behalf of the MTA.
11. Correspondence to or from the MTA Office of the Inspector General concerning leaks at Site J.

**THE FOLLOWING DOCUMENT REQUESTS CONCERN
SITES OTHER THAN SITE J**

12. Engineering reports prepared by or on behalf of the MTA concerning water leaks at Site A, Site P, Site K, Site L.
13. Field Reports prepared by or on behalf of the MTA concerning water leaks at Site A, Site P, Site K, Site L.
14. Inspection reports prepared by or on behalf of the MTA concerning water leaks at Site A, Site P, Site K, Site L.
15. Meeting Minutes concerning leaks at Site A, Site P, Site K and Site L.
16. Meeting minutes which address or pertain to water proofing, rebar and or shotcrete at Site A, Site P, Site K, Site L.

So Ordered:

Hon. Alan D. Scheinkman, J.S.C.

BAHN, MULTER & GOLD, LLP
Attorneys for Plaintiff

By: Martin I. Gold, Esq.
Of Counsel
555 Fifth Avenue, 14th floor
New York, NY 10017
212-447-4700
917-886-9572 (direct)
martygoldlaw@aol.com

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

YONKERS CONTRACTING COMPANY INC.

Index No.: 61442/2014

Plaintiff,

-against-

K.J.C. WATERPROOFING INC. and SUPERIOR
GUNITE, ZURICH AMERICAN INSURANCE
COMPANY, NICHOLSON CONSTRUCTION CO., and
CITI STRUCTURE LLC,

Defendants.

**JUDICIAL SUBPOENA
AD TESTIFICANDUM**

THE PEOPLE OF THE STATE OF NEW YORK

To:

METROPOLITAN TRANSIT AUTHORITY by its employee
MIKE KYRACIOU
2 Broadway
New York, NY 10004-2207

GREETINGS:

***WE COMMAND YOU**, That all business and excuses being laid aside, to give testimony necessary to the prosecution of this action, by **Mike Kyraciou**, and that you bring with you, and produce at the time and place aforesaid for you produce for discovery, inspection and copying, the documents listed on Schedule A annexed hereto and made a part hereof, on **January 13, 2016** at 10:00 o'clock, or at any recessed or adjourned date A.M, at the offices of Bahn, Multer LLP, 555 Fifth Avenue, 14th Floor, NY, NY 10017.*

The subject matter of this matter and the documents concerns construction and other work done and water leaks at Site J --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 located at 34th Street between 10th and 11th Avenues, in New York County, in New York, NY (hereinafter referred to as the "Project"), pursuant to Contract No.: C-26510 NYCTA as well as additional information concerning leaks and construction methods at Sites A, K, L and P.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

ENTER:

Hon. Alan D. Scheinkman, JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

YONKERS CONTRACTING COMPANY INC.

Index No.: 61442/2014

Plaintiff,

-against-

K.J.C. WATERPROOFING INC. and SUPERIOR
GUNITE, ZURICH AMERICAN INSURANCE
COMPANY, NICHOLSON CONSTRUCTION CO., and
CITI STRUCTURE LLC,

Defendants.

**JUDICIAL SUBPOENA
AD TESTIFICANDUM**

THE PEOPLE OF THE STATE OF NEW YORK

To:

METROPOLITAN TRANSIT AUTHORITY by its employee
MAHER MAHMOUD
2 Broadway
New York, NY 10004-2207

GREETINGS:

WE COMMAND YOU, That all business and excuses being laid aside, to give testimony necessary to the prosecution of this action, by Maher MAHmoud, and that you bring with you, and produce at the time and place aforesaid for you produce for discovery, inspection and copying, the documents listed on Schedule A annexed hereto and made a part hereof, on January 14, 2016 at 10:00 o'clock, or at any recessed or adjourned date A.M, at the offices of Bahn, Multer LLP, 555 Fifth Avenue, 14th Floor, NY, NY 10017.

The subject matter of this matter and the documents concerns construction and other work done and water leaks at Site J --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 located at 34th Street between 10th and 11th Avenues, in New York County, in New York, NY (hereinafter referred to as the "Project"), pursuant to Contract No.: C-26510 NYCTA as well as additional information concerning leaks and construction methods at Sites A, K, L and P.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

ENTER:

Hon. Alan D. Scheinkman, JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

YONKERS CONTRACTING COMPANY INC.

Index No.: 61442/2014

Plaintiff,

-against-

K.J.C. WATERPROOFING INC. and SUPERIOR
GUNITE, ZURICH AMERICAN INSURANCE
COMPANY, NICHOLSON CONSTRUCTION CO., and
CITI STRUCTURE LLC,

Defendants.

**JUDICIAL SUBPOENA
AD TESTIFICANDUM**

THE PEOPLE OF THE STATE OF NEW YORK

To:

METROPOLITAN TRANSIT AUTHORITY by its employee
RAMESH RAMANATHAIAH
2 Broadway
New York, NY 10004-2207

GREETINGS:

*WE COMMAND YOU, That all business and excuses being laid aside, to give testimony necessary to the prosecution of this action, by RAMESH RAMANATHAIAH, and that you bring with you, and produce at the time and place aforesaid for you produce for discovery, inspection and copying, the documents listed on Schedule A annexed hereto and made a part hereof, on **January 12, 2016** at 10:00 o'clock, or at any recessed or adjourned date A.M, at the offices of Bahn, Multer LLP, 555 Fifth Avenue, 14th Floor, NY, NY 10017.*

The subject matter of this matter and the documents concerns construction and other work done and water leaks at Site J --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 located at 34th Street between 10th and 11th Avenues, in New York County, in New York, NY (hereinafter referred to as the "Project"), pursuant to Contract No.: C-26510 NYCTA as well as additional information concerning leaks and construction methods at Sites A, K, L and P.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

ENTER:

Hon. Alan D. Scheinkman, JSC