

REQUEST FOR PROPOSAL (RFP)

SITE WIDE WORK ORDER CONTRACT

FOR

**WORLD TRADE CENTER - ASBESTOS,
LEAD AND UNIVERSAL WASTE
ABATEMENT**

JUNE 27, 2013

RFP# 33935

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
REQUEST FOR PROPOSAL (RFP)**

**SITE WIDE WORK ORDER CONTRACT
FOR
WORLD TRADE CENTER –
ASBESTOS, LEAD AND UNIVERSAL WASTE ABATEMENT**

June 27, 2013

RFP # 33935

I. INTRODUCTION:

The Port Authority of New York and New Jersey (the “Port Authority” or the “Authority”) is an agency of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Port Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers) and interstate tunnels and bridges (the Lincoln and Holland Tunnels, the George Washington, Bayonne and Goethals Bridges and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

In addition, the Port Authority operates the Port Authority Bus Terminal in Manhattan, the largest facility of its kind in the world, and the George Washington Bridge and Journal Square Transportation Center bus stations. The Port Authority also operates the Port Authority Trans-Hudson Corporation (PATH), a rapid rail transit system linking Newark and a key link in interstate commuter travel, and the Jersey City and Hoboken waterfronts. Other properties managed by the agency include but are not limited to a large satellite communications facility (the Teleport) in Staten Island and a resource recovery co-generation plant in Newark. Prior to September 11, 2001, the Port Authority’s headquarters were located in the World Trade Center, and that complex is still owned and being partially redeveloped by the Authority.

The Port Authority seeks to solicit proposals from qualified abatement Contractors (firms) for the removal and disposal of asbestos, lead and universal waste from the World Trade Center Site on an as needed, Work Order basis. The Port Authority anticipates awarding a Contract to one (1) Contractor based on lowest percentage mark-up for Net Cost.

Proposals in response to this RFP are due on the RFP Due Date set forth below in the section entitled "Submission Instructions and Content". Proposals received after that date and time may not be accepted.

II. PROJECT DESCRIPTION:

The Authority wishes to solicit firms to submit proposals for RFP# **33935** "Site Wide Work Order Contract for World Trade Center – Asbestos, Lead and Universal Waste Abatement."

A. Scope of Work

It is anticipated but it is not guaranteed that the Work required by the Contract may include, but may not necessarily be limited to:

1. Demolition of concrete and/or asphalt pavement.
2. The installation of temporary power and lighting to perform the Work.
3. The removal and disposal of asbestos, asbestos-containing material and asbestos-contaminated materials away from the Authority property
4. The removal and disposal of lead, lead-containing and lead contaminated material away from the Authority property.
5. The removal and disposal of universal wastes away from the Authority property.
6. Scheduling and coordination of the individual Work Orders on the site, as required by the Engineer.
7. Staging of the work to minimize disruption of on-going construction at the site, including adherence to restricted work hours.

B. Estimated Total Contract Price

For information purposes only, the Authority estimates that the total value of this Work Order Contract will be approximately \$1.5 million. The Authority may issue one (1) or more Work Orders.

C. Contract Schedule

The Authority anticipates awarding the subject contract for a term of two (2) years with the option to renew for one (1) additional year.

D. Inquiries/Point of Contact

Please direct all inquiries regarding this RFP to the individual(s) named below, only. This individual is your sole point of contact throughout the entire RFP process. Neither Joann Spirito nor any employee of the Authority is authorized to interpret the RFP or give additional information as to its requirements. Such interpretation or additional information will be given only by written addendum to this RFP.

Name: Joann Spirito, Contract Specialist
Email: jspirito@panynj.gov

III. SELECTION PROCESS

A. Prerequisites

Only Proposals from firms demonstrating previous experience in the performance of work similar to those contemplated herein shall be considered. The Authority, in its sole discretion, will determine whether a Proposer meets the prerequisite requirements. Company brochures alone shall not be submitted for the purpose of demonstrating experience and technical expertise. Submittals must be tailored to the specific requirements of this RFP. If the Proposer cannot demonstrate that it meets all of the below mentioned qualifications, then the Proposer may with others form a joint venture and request that the joint venture be qualified as set forth in paragraph IV.B.8 below.

Only firms which can demonstrate that they comply with the following prerequisites should submit Proposals, as only Proposals from such firms will be considered:

1. Minimum Experience of the Firm:

- a) The Proposer must demonstrate to the satisfaction of the Port Authority that it has a minimum of five (5) years prior experience and technical expertise in performing work similar to that required by this RFP.
- b) The Proposer must also demonstrate that during the last five (5) years it has successfully completed or substantially completed as a prime or general contractor at least three (3) contracts of a size and complexity comparable to that indicated in Paragraph II.A above. The work must have been completed skillfully in a satisfactory manner and on time.

2. Minimum Qualifications of the Project Manager:

- a) The Proposer's Project Manager must have a minimum of five (5) years of construction experience on contracts comparable in size, type and complexity comparable to that indicated in Paragraph II.A above

All Proposers must include documentation that they meet the above prerequisites. Attachment I – Contractor's Qualification Statement should be completed and submitted as part of the Proposal to document the required experience. By furnishing this solicitation document to Proposers, the Port Authority has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the work. In addition, a determination that a Proposer has met the prerequisites is no assurance that it will be deemed qualified in connection with other Proposal requirements included herein.

B. Evaluation Criteria

Firms (including joint ventures) that are found to satisfy the minimum requirements of the Prerequisites of subparagraph A of this section (above) will then be evaluated by an Evaluation Committee, which will then determine which firm (or joint venture)

may proceed with the award of a Contract. A Selection Committee will be composed of Port Authority personnel.

The Selection Committee will base its evaluation on selection criteria, which are listed below:

1. Firm Qualifications and Experience
2. Staff Qualifications and Experience
3. Safety Record

IV. SUBMISSION INSTRUCTIONS AND CONTENT

A. Proposers must clearly indicate the RFP# and Title on the outside of any package or document submitted in connection with this Contract.

Proposals are to be submitted in sufficient time so that the Authority receives it no later than 2:00 p.m. on **July 19, 2013** to:

The Port Authority of New York and New Jersey
Attn: Bid/Proposal Custodian, Procurement Department
2 Montgomery Street, 3rd Floor
Jersey City, NJ 07302

Late submittals may be rejected.

A VALID PHOTO ID IS REQUIRED TO GAIN ACCESS INTO THE BUILDING, IF YOU ARE HAND DELIVERING YOUR QUALIFICATION INFORMATION.

B. Submittals

The following items, must be submitted in order to be considered for qualification on this specific project:

1. Attachments

In order to expedite the evaluation of the RFP information furnished, the Proposer must complete and submit the attached documents. Responses that fail to adhere to this stipulation may be excluded from consideration. The following attachments are incorporated herein and must be submitted:

- A. Attachment I – Contractor's Qualification Statement
- B. Attachment II – Agreement on Terms of Discussion
- C. Attachment III - Nondisclosure and Confidentiality Agreement (NDA)
(click on links to the [Instructions](#) and the [NDA form](#))
- D. Exhibit A – Contractor Quality Program Requirements
- E. Exhibit B – WTC Site Security Requirements
- F. Exhibit C – Port Authority Master Agreement

2. Firm Qualifications and Experience

Proposing firm shall submit, with their proposal, written verifiable supporting documentation that it has satisfied or exceeded the minimum requirements set forth in Section III, Prerequisite A.1 above.

3. Staff Qualifications and Experience

Proposing firm shall submit:

- a) The name and qualifications of the individual who will function as Project Manager for the duration of the work of the Contract. The Proposer's Project Manager must have a minimum of five (5) years of construction experience on contracts comparable in size, type and complexity comparable to that indicated in Paragraph II.A above.
- b) Proposed Organizational Chart for the work, showing key construction supervision personnel to be assigned for the duration of the work of the Contract along with the anticipated function of each such person. Subcontractor personnel shall be clearly identified on this Organizational Chart.
- c) Resumes of each person included in the above Organizational Chart highlighting prior experience relevant to this Contract.

4. Safety Record

As part of your submission, please provide, at a minimum, your firm's safety record of for the past three (3) years and the documentation below, if applicable. In addition, please include the safety record for all of your firm's affiliates. Provide the following data regarding your firm's safety record:

- Experience Modification Rate – Provide your firm's and for each of your named Subcontractors Insurance Experience Modification Rate (EMR) for the last three years and supply a letter from your firm's insurance broker or carrier indicating the EMR of your firm for the last three years. If the ratio exceeds 1.2, a written explanation shall be provided.
- OSHA Inspection Record – Provide your firm's OSHA Inspection History for the last three years by supplying a printout of the OSHA public database inspection record (<http://osha.gov/pls/imis/establishment.html>) and a printout of any citations. If applicable, a written explanation shall be provided for any OSHA citations issued to your firm.
- OSHA 300 Logs –Provide a copy of the last three years OSHA 300 Logs. For any job related fatality recorded by your firm, or any fatality which occurred to any worker irrespective of who he or she was employed by on a project where your firm was the Construction Manager or Controlling Contractor, provide a written explanation detailing the specifics of the fatality and any corrective actions that have been taken to prevent reoccurrence.

- Incidence Rates - OSHA/BLS Total Recordable Incident Rate (TRIR) and Lost Work Day Incident Rate (LWDIR) – Provide your firm’s Incidence Rates for the last three years by supplying a printout of the Public database BLS industry Incidence Rates (<http://www.bls.gov/iif/oshwc/osh/os/pr056ny.pdf>) with the appropriate industry and type of construction highlighted.
- Fatalities – List any work related fatalities that occurred to your firm’s personnel or any contractor’s personnel performing work on any project where your firm was the Construction Manager or Controlling Contractor for the last three years.

Incidence Rates above Bureau of Labor Statistics (BLS) rates for specific work type - A written explanation shall be provided for a Total Recordable Incident Rate (TRIR) or Lost Workday Case Incidence Rate (LWDCIR) in excess of the BLS for NY State for the industry and work type performed. Firms that are awarded Master Agreements will be required to submit updated Safety Records annually.

5. Financials

The Proposer will be required to demonstrate that it is financially capable of performing the Work Order resulting from this RFP. The determination of the Proposer’s financial qualifications and ability to perform the Work will be made by the Port Authority in its sole discretion. The Proposer shall submit, with its proposal, the following:

A. (1) Certified financial statements, including applicable notes, reflecting the Proposer’s assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Proposer’s most recent fiscal year.

(2) Where the certified financial statements in (1) above are not available, then submit reviewed statements from an independent Certified Public Accountant setting forth the aforementioned information.

Where the statements submitted pursuant to subparagraphs (1) and (2) above do not cover a period which includes a date not more than forty-five (45) days prior to the RFP Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.

B. The Proposer’s Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer’s Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer’s account.

6. Performance And Payment Bond

Upon issuance of a Work Order, the Contractor must be able to obtain a Performance And Payment Bond for the amount indicated in paragraph II.B from a surety company whose name appears on the current list of the Treasury Department of the United States as acceptable as a surety upon federal contracts. **A letter from the surety company must be submitted with this RFP.**

7. Required Licenses/Certifications

Proposers and/or proposed sub-contractors must have all required New Jersey, New York and/or New York City certifications and/or licenses to perform the asbestos, lead and universal waste abatement work in accordance with codes, rules and regulations if applicable. Performance of any Work by the Contractor or the Contractor's employees or subcontractor(s), if any, without all valid required certifications shall be deemed a violation of the Contract.

8. Joint Ventures

The Authority will entertain proposals from a joint venture. If two (2) or more entities separately elect to submit a proposal as a joint venture, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If Proposer cannot demonstrate that it meets all of the referenced qualifications, then it may with others form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively.)

All joint venture Proposers must provide documentation of their legal status.

9. Security Information Manager

Performance of the Contract may require access to Port Authority Confidential and Privileged Security Information. Confidential and Privileged Security Information is information belonging to the Port Authority that could, if it were subject to unauthorized access, modification, loss or misuse, seriously damage the Port Authority, public safety or homeland security. Protecting this sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. These procedures are identified in the Port Authority's "Information Security Handbook". To that end, the Security Capital Program maintains a secure collaborative Program Website called Livelink to store, share and distribute all Project documentation. For any information deemed to be Confidential and Privileged Security Information/SSI, Livelink is the only acceptable means of electronically distributing and sharing such information. Each prospective bidder and each participant in a joint venture shall designate a Security Information Manager

("SIM") responsible for identifying members of its team who will need access to Livelink and for ensuring that those members have passed the requisite background checks and have completed the requisite Livelink access forms. The SIM will be responsible for maintaining his firm's Livelink user account access list. In addition, the SIM shall identify an individual who will be trained by the Port Authority in the use of Livelink and that individual will subsequently be responsible for training the prospective bidder's team.

NOTE: **The Information Security Handbook requires that certain criteria be met prior to being granted access to Confidential Information. Generally, an individual must be a U.S. Citizen, an alien who has been lawfully admitted for permanent residency or employment (indicated by immigration status), as evidenced by Immigration and Naturalization Service documentation or a national of the United States as defined by the Immigration and Nationality Act. This requirement may be waived in exceptional circumstances and prospective Bidders should refer to § 3.2 of the Information Security Handbook for details on this policy and the process for waiver.**

C. WTC SITE REQUIREMENTS

1. Background Qualification Questionnaire Package

The Port Authority has implemented a Project Corruption Prevention Program ("PCPP") for this Project. One of the components of the PCPP is contractor and vendor screening, designed to ensure that, in addition to demonstrated records of quality performance and solid financial capacities, firms awarded contracts for work on the WTC Projects possess high ethical standards and records of law abiding conduct. Screening is performed through the use of a background qualification questionnaire package ("BQQP"). The Contract requires Proposers to complete a BQQP as part of their proposal. In addition, Proposers will also be required to ensure that their respective subcontractors, subconsultants and vendors, of all tiers, also complete BQQPs.

The BQQP document may be downloaded at:

http://www.panynj.gov/wtcprogress/pdf/PANYNJ_OIG_WTC_BQQP.zip

2. Independent Monitor - Access to Records

The Port Authority has selected an independent Monitor for this Project. The Contract will require the bidder, all subcontractors and materialmen of any tier, to cooperate fully with the Monitor and with the Port Authority, including but not limited to providing complete access to all personnel and records related to the performance of the Contract.

V. NOTIFICATION

Notifications to a Proposers will be made only by a notice in writing, signed by the Director of Procurement or her designated representative on behalf of the Authority and mailed or delivered to the office designated by the Proposers in its response to this RFP.

VI. M/WBE SUBCONTRACTING PROVISION

The Port Authority has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Women-Owned Businesses (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The Firms awarded this Work Order will be required to use good faith efforts to provide for meaningful participation by the Port Authority certified M/WBEs as defined in this document in the purchasing and subcontracting opportunities associated with this RFP, including purchase of equipment, supplies and labor services.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Minority Group" means any of the following racial or ethnic groups:

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;
- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

Firms awarded this Work Order will be required to provide an M/WBE Participation Plan, in accordance with the M/WBE Subconsulting Provisions hereunder. Firms are directed to use form PA3749B, which may be downloaded at:

<http://www.panynj.gov/business-opportunities/become-vendor.html>

The M/WBE Participation Plan (“Plan”) submitted by the Proposer to the Port Authority shall contain, at a minimum, the following:

- Identification of M/WBE’s: Provide the names and addresses of all M/WBEs included in the Plan. If none are identified, describe your plan and process for selecting participant firms in order to achieve the good faith goals under this Agreement.
- Level of Participation: Indicate the percentage of M/WBE participation expected to be achieved with the arrangement described in the Plan and in accordance with the requirements stated in the Standard Agreement.
- Scope of Work: Describe the specific scope of work each M/WBE firm will perform.
- Previous M/WBE Participation: Describe any previous or current M/WBE participation that the Proposer has utilized in the performance of its contracts.

All M/WBE subconsultants listed on the M/WBE Participation Plan must be certified by the Port Authority in order for the Firm to receive credit toward the M/WBE participation goals set forth in this RFP. Port Authority M/WBE certified vendor information is available to all vendors who are registered with the Port Authority. Please log on to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for M/WBE firms by a particular commodity or service. The Port Authority makes no representation as to the financial responsibility of such firms or their ability to perform work.

Proposed M/WBE Participation Plans will be reviewed and approved by the Authority’s Office of Business Diversity and Civil Rights (“OBDCR”).

The Director has set a goal of 12 percent participation by qualified and certified MBEs and 5 percent participation by qualified and certified WBEs on technical service projects.

In cases of W/WBE Firms not listed in the Directory, but which the Proposer believes should be eligible for certification by the Authority because it is (1) an M/WBE, as defined above and in the Standard Agreement and (2) competent to perform portions of the work, the Proposer shall submit an M/WBE Uniform Certification Application to the Port Authority of New York and New Jersey, Office of Business Diversity and Civil Rights (“OBDCR”), 233 Park Avenue South, 4th Floor, New York, NY 10003. The application is available online at <http://www.panynj.gov/business-opportunities/sd-become-certified.html>. In addition, to update a previously-certified firm’s certification file and to advise OBDCR of changes to any information, please email these changes to certhelp@panynj.gov. Credit toward applicable goals will be granted only to Port Authority certified vendors. For more information about M/WBE Programs, call (212) 435-7808.

END RFP DOCUMENT

ATTACHMENT I

THE PORT AUTHORITY OF NY & NJ

CONTRACTOR'S QUALIFICATION STATEMENT

FOR

REQUEST FOR PROPOSAL (RFP)

FOR SITE WIDE WORK ORDER CONTRACT

FOR WORLD TRADE CENTER - ASBESTOS, LEAD AND UNIVERSAL WASTE
ABATEMENT

June 27, 2013

RFP# 33935

A. General Contractor's General Business Information

Statement submitted by:

Name of Firm:

Name of Principal:

Business Address:

Telephone No:

Fax No:

E-mail:

Name & Telephone Number of contact person if not individual mentioned above:

Check how proposal will be submitted: ___ Single Entity ___ Joint Venture

If a Joint Venture, each participant in such Joint Venture must submit all the information that is required for a single entity.

Indicate the type of work generally performed with your own work force.

Indicate which part of the work indicated in paragraph II.A. of the attached Request For Proposal Information ("RFP") you plan on performing with your own forces and what work you plan on sub-contracting to another firm.

Work to be performed with own forces:

Work to be performed by sub-contractors:

B. Relevant Experience and Past Performance:

- On **Schedule A** below list construction Contracts completed by your firm, which document **your firm's meeting of the requirements indicated in paragraph III.A**. If a joint venture, list each joint venture partner's projects separately. Indicate if the contract was performed by your firm's own forces or by a sub-contractor. Submit each project on one page in the following format.

Schedule A: CONTRACTS COMPLETED:

Project Name, Location and Description	Owner/ Name Address & Tel No	Design Engineer*	Date Completed	Contract Amount	Percent age of Work Comple ted by Own Forces

***Include Name, Address and Phone No. of Reference Contract**

****Indicate amount of Firm's contract and if work was done as prime contractor**

On Schedule B, attached, list the name and qualifications of the individual who will function as the Project Manager as well as those of any other key construction supervision personnel to be assigned to the Contract along with the anticipated function and relevant experience of each person in the format below.

Attach resumes.

Schedule B: Key Construction Supervision Personnel:

Name	Position	Date started with Organization	Date started in Construction	Prior Positions and Experience in Construction

- On Schedule C, attached, list current projects **currently under construction** (including work on hand and projects for which bids have been submitted) by your firm. If

joint venture, list each joint venture partner's projects separately. Please follow format below in one page per contract

Schedule C: Current Work on Hand:

Firm: _____

Project Name, Location and Description	Owner. Name Address/ Tel No.	Design Engineer	Contract Amount	Scheduled Completion Date and Percentage Complete

Schedule D: Current Bids/Proposals Submitted:

Firm Name: _____

Project Name, Location and Description	Owner Name, Address & Tel No	Design Engineer*	Contract Amount	Low Bidder (Y/N)	Anticipated award Date/Contract Duration

***Include Name, Address and Phone No. of Reference Contract**

****Indicate amount of Firm's contract and if work was done as prime contractor**

Does your firm have the required certification(s) and/or license(s) required under paragraph II.A, if required? Yes No Not Applicable

- If Yes - Submit documentation of required certification(s) and/or license(s)
- If No, indicate how you plan on meeting this requirement:

Has your firm ever failed to complete any construction contract awarded it?
 Yes No

If yes, describe the circumstances on a separate piece of paper.

In the last five (5) years, has your firm ever failed to substantially complete a contract in a timely manner? Yes No

If yes, describe the circumstances on a separate piece of paper.

Identify prior contracts that contained stated goals for M/WBE participation and how such goals were met or exceeded:

Contract	Stated Goals	Actual % Obtained	Comments

Financial Information:

Can your Firm provide a Performance And Payment Bond for the full amount required? Yes No

Indicate approximate total bonding capacity: _____

Indicate name of your proposed surety company and name, address and phone number of agent:

➤ Name: _____

➤ Address: _____

➤ Telephone No. _____

- **Submit letter from your surety documenting your ability to submit the required Bond.**

D. Contractor's Fee

1. For the purposes of determining the Contractor's Fee, the Contractor shall utilize an amount equal to the Estimated Total Contract Price included in RFP# 33935 (Net Cost).
2. An amount equal to _____ percent (___%) of the Net Cost. (Such amount hereinafter called the "Contractor's Fee")
3. An amount equal to one third (1/3) of the percent inserted in 2. above of the sum of the amounts of 1. and 2. above for the Work performed by a subcontractor. (Such amount hereinafter called the "Contractor's Fee For Subcontracting Work").

E. Certification

I hereby certify that the information submitted herewith, including attachments is true to the best of my knowledge and belief.

(Business name of Firm)

By: _____
(Signature of officer of Firm)

(Title of officer of Firm)

(Signature of officer of Firm)

Dated: _____

(Type or print title of officer of Firm)

ATTACHMENT II

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority's receipt or discussion of any information (including information contained in any proposal, vendor qualification, ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on the Port Authority or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between the Port Authority and us). Any such information given to the Port Authority before, with or after this Agreement on Terms of Discussion ("Agreement"), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to the Port Authority rights to any matter, which is the subject of valid existing or potential letters patent. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure (FOI Code) adopted by the Port Authority's Board of Commissioners on March 29, 2012, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets which, if disclosed, would cause injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, as more fully set forth in the FOI Code, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

(Company)

(Signature)

(Title)

(Date)

**ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY.
DO NOT RETYPE.**

EXHIBIT A

CONTRACTOR QUALITY PROGRAM REQUIREMENTS

CONTRACTOR'S QUALITY PROGRAM REQUIREMENTS

A. General

The Contractor shall submit a description of its Quality Assurance/Quality Control (QA/QC) Plan addressing the QA/QC organization; how the Plan extends to its subcontractors and others in the supply chain; resources and procedures that the Contractor will use for evaluating construction activities, products and related activities, which shall conform to the Authority's WTC Project Quality Assurance Plan and the FTA QA/QC System requirements (FTA-IT-90-5001-02.1), attached as an Appendix hereto.

B. Scope

This section defines the responsibilities of the Contractor in the management of quality in the construction of the Project to achieve an end product conforming to the level of quality required by the Contract Documents.

C. Contractor's Quality Program

The Contractor shall establish, implement and maintain an effective Contractor Quality Control Program (CQCP) to manage, control, document and assure that the work complies with the requirements of the Contract Documents. The quality assurance/quality control program shall describe all of the means, methods, plans, procedures, processes and the organization proposed by the Contractor to assure that the level of quality specified in the Contract Documents for all materials, equipment, and workmanship incorporated in the temporary or permanent construction is appropriately satisfied whether constructed, fabricated or manufactured onsite or offsite by the Contractor or his subcontractors, suppliers and vendors, the quality assurance/quality control program shall also address the training and certification of personnel tasked with the implementation and maintenance of the program in the techniques necessary to ensure quality, including but not limited to, testing and inspection.

At a minimum, the quality assurance/quality control program developed and submitted to the Engineer for review and approval must satisfy the requirements of the "Quality Assurance & Quality Control Guidelines" of the Federal Transit Administration / U.S. Department of Transportation (FTA-IT-90-5001-02.1), dated February 2002.

March 11, 2010

D. Submittal of Quality Program

1) Within 15 days after the acceptance of the Contractor's Proposal, the Contractor shall furnish for the approval of the Authority (the Manager-WTCC QA), the QA/QC Program. The QA/QC Program shall be signed by a principal of the firm and his designated Quality Control Manager ("QCM"). If the Contractor fails to submit an acceptable QA/QC Program within the prescribed time, the Manager, WTCC Quality Assurance (MWTCCQA) may not allow the work to continue unless an acceptable interim plan which addresses all of the requirements of the QA/QC Program is provided. The interim plan will only be acceptable for 30 days.

2) Failure to comply with either of these submittal requirements within the prescribed times may result in the Authority issuance of an order to the Contractor to stop all work on this Project.

E. Changes To The CQP

The Contractor shall notify the Manager, WTCC QA in writing of any proposed change to the CQP. All proposed changes are subject to the approval of the Manager, WTCC QA. The Contractor shall review the approved CQP on a quarterly basis for continued adequacy to meet the requirements of the Contract Documents and shall incorporate changes to overcome the deficiencies in the program that affect quality. Use shall be made of feedback data generated by the Contractor, subcontractors, suppliers and the Manager, WTCC QA.

F. Elements Of Contractor's Quality Program

The CQP shall include the following elements: (Required FTA Elements Added)

<u>ELEMENT PARAGRAPH</u>	<u>PARAGRAPH SPECS</u>
Management Organization, Staffing and Responsibilities	G
Documented Quality Management System	H
Submittal Management, Document Control and Document Changes	I
Receiving, Handling, Storage and Control of Materials and Equipment	J

March 11, 2010

Subcontractor and Supplier Control – Purchasing	K
Inspection and Testing Plan	L
Control of Construction Processes	M
Control of Measuring and Testing Equipment	N
Control of Nonconforming Conditions	O
Documentation by Quality Records	P
Contractor Internal Audit	Q
Training	R
Statistical Analysis	S
Design Process Control	T

G. Management Organization, Staffing And Responsibilities

The CQP shall describe the Contractor's project organization (including major subcontractors and suppliers) and include an organization chart showing names, titles and lines of authority, and the

Interrelationship of those involved in managing and directing the Project. The qualifications, duties, responsibilities and functions of the Construction Management Team shall be provided.

The Contractor shall be fully responsible for effectively managing all aspects of the CQP and shall present the management strategy for approval at the pre-award qualification hearing, as part of the validation of qualifications for this Project. This strategy shall identify the organization, staffing and responsibilities as a minimum. The person designated to be responsible for overall Quality Management may be the Project Manager or the Corporate Quality Officer.

Both shall participate in developing the CQP for this project and shall sign it prior to submittal.

Adequate staff and resources shall be provided to perform all quality control activities to assure contract compliance whether the work is performed by the Contractor's own forces or by subcontractors. The personnel comprising this staff shall be fully qualified by experience and technical training to perform their assigned responsibilities. The Engineer may direct the Contractor to provide additional staff and resources to the Project Manager or Corporate Quality Officer if, in the sole opinion of the Engineer, there are significant deficiencies in implementing the CQP requirements.

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The size and composition of the Contractor's quality organization may vary as the project progresses, however, at all times it must be compatible with the level of effort and capability required by the Contract Documents.

The Project Manager or Corporate Quality Officer shall maintain a legible, hand-written daily diary or activity log indicating all major activities related to the management of quality on this Project that were personally performed by him, and each entry in the diary or log shall be signed and dated by him.

The Project Manager or Corporate Quality Officer shall prepare and submit a 6-week look-ahead schedule forecasting her/his quality activities associated with the Contract's progression.

The Project Manager or Corporate Quality Officer's office shall be based near the worksite. The Project Manager or Corporate Quality Officer shall report to the work-site on daily basis.

If the Contractor's QC Program is not being performed to the satisfaction of the Engineer, the Engineer may direct the Contractor to assign one or more full-time additional Quality Project Manager(s) dedicated solely to this project at no additional cost or expense to the Engineer, as required to successfully implement the approved CQP.

The Quality Manager (QM) shall be a full time person assigned exclusively to this Project Final Completion. The Quality Manager's sole function shall be to manage all quality matters for the Project and have the Authority to act in all quality matters for the Contractor. The QM shall not be subordinate to the Contractor's personnel that directly perform, supervise or progress the work. The QM shall have direct access to the upper management of the Contractor. The QM shall possess at least five (5) years of Quality related experience. . The resume of the QM shall include a description of the duties, responsibilities and the QA/QC record of assignments for the preceding five-year period which establishes the candidate's experience as a Quality Manager. The QM's qualifications shall be submitted to the Manager, WTCC QA for approval. The QM shall review and revise the CQP for this Project and shall sign it prior to resubmittal.

H. Documented Quality Management System

The Contractor shall establish and maintain a documented quality management system to ensure project quality objectives are satisfied. The quality management system requirements shall extend to the any suppliers and contractors, as appropriate.

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Written procedures and instructions shall be developed for activities affecting quality in design, purchasing, manufacturing and construction, as applicable to the work performed. Procedures and instructions shall also be developed for control of inspection, testing, nondestructive examination, control of non-conformances, corrective action, maintenance of quality records, quality audits and training.

The procedures shall contain a statement of purpose and scope and referenced to Codes, standards or specifications. In developing the procedures, consideration shall be given to identifying and acquiring any inspection equipment, skills or special processes needed to ensure quality performance. Inspection and testing techniques should be kept up-to-date. The procedures and instructions should contain formats for the quality records needed to ensure that the procedures and instructions are followed and documentation requirements are understood.

I. Submittal Management, a Document Control and Document Changes

The CQP shall provide for establishing and maintaining a submittal management system which schedules, manages and tracks all submittals required by the Contract Documents including those of subcontractors and suppliers. The submittal schedule shall indicate all submittals due far enough in advance of the scheduled dates for installation to allow for the time required for reviews, for securing necessary approvals, for possible revisions and resubmittals and for placing orders and securing delivery. The submittal schedule shall be updated as required and submitted. Before the planned start of work on a system, a listing of all submittals planned for the system and its subsystems shall be submitted. Submittals for a portion of a system will not be accepted for review until the complete list of submittals for the system has been submitted. The Contractor shall review submittals prepared by its subcontractors and suppliers for compliance with the Contract Documents, before submitting it to the Engineer.

Shop drawings shall be prepared by the Contractor, subcontractors or suppliers and shall be reviewed by the Contractor to verify all materials and field measurements and checked and coordinated to assure that the information contained on the shop drawings, product data and samples conforms with the requirements of the Contract Documents as required. No portion of the work requiring these shop drawings shall be commenced until this review and coordination has been performed by the Contractor. These shop drawings and any other documentation which demonstrates the Contractor's compliance with the Contract Documents shall be kept at

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the Contractor's office and are available for inspection and audit of the Engineer. Where the Engineer requires certain shop drawings and other documents required by the specifications are made available to him but which do not require his approval they will be listed in the specifications and noted that they are for information only.

The CQP shall also provide for establishing and maintaining a document control system for control of project documents and data such as drawings, specifications, calculations, calibration records, inspection procedures, test procedures, test results, special work instructions, operational procedures and QA Program and related procedures. The document control system shall provide assurance that the work is performed to the latest approved drawings and specifications and that these documents are made available at each work location, prior to the start of the work, to all users who require them. Obsolete documents shall be promptly eliminated from each work location. Any superseded documents retained for the record shall be clearly identified as such.

All changes to documents shall be processed in writing and records maintained of changes as they are made. The Project Drawing List shall identify the revision number and the revised date for each drawing that is revised.

J. Receiving, Handling, Storage And Control Of Materials And Equipment

The CQP shall contain provisions for verification that material and equipment meet specified quality and contractual requirements and that they are properly received and handled to ensure that the quality is not degraded. The Contractor shall establish and maintain documented procedures that ensure that all materials and equipment are positively identifiable and traceable to a specified origin point. Purchased items entering the construction site/warehouse shall be inspected/tested, including their supporting documentation, for verification that subcontractors and suppliers have met the appropriate quality requirements of the Contract Documents. Purchased items shall bear a suitable control device as evidence of subject inspection/test. An identifier containing the inspection/test date, name of inspector and inspection/test status (Pass/Fail) shall be attached to each inspected/tested item.

Nonconforming purchased items shall immediately be tagged, removed and segregated to a controlled area.

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Certificates of compliance and/or conformance shall be submitted for materials and equipment.

The Contractor shall provide written requirements to assure that the desired quality of an item is not compromised or degraded as a consequence of inappropriate handling, lifting and rigging methods.

The Contractor shall provide written requirements for the cleaning, preservation and storage of materials and equipment. Proper records shall be maintained of all required maintenance activities during storage.

Purchased material and equipment shall be clearly marked so that it can easily be identified without excessive handling or opening of crates and boxes.

The materials storage area(s) shall be arranged for ease of retrieval and to prevent damage, deterioration or loss. In general, materials received first shall be used first.

Positive material identification (PMI) shall be implemented so that each item has a unique identifier (PMI serial number) to distinguish apparently identical items made in separate fabrication processes and confirm that the material of construction is indeed the grade of material specified. PMI numbers must appear on all inspection and construction records.

K. Sub-Contractor and Supplier Control. - Purchasing

The QC program shall assure that items and services are procured from subcontractors and suppliers capable of meeting all requirements of the Contract Documents. The Contractor shall review his agreements with subcontractors and suppliers to insure inclusion of all applicable quality requirements. All subcontractors and suppliers shall comply with the Contractor's Quality Control Program or their own program. If the subcontractors and suppliers elect to submit their own quality control programs, it must

be approved as meeting the requirements of this section by the Prime Contractor's Quality Personnel. The Contractor shall review the subcontractor's/supplier's agreements to ensure the inclusion of applicable quality requirements.

Source inspection shall be performed at the subcontractors'/suppliers' plants. Those quality characteristics, which cannot or will not be verified during subsequent processing, shall be

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subject to source inspection. Source inspection may not be necessary when the quality of the item can be fully and adequately verified by review of inspection and test reports, inspection on receipt or other means.

The Contractor shall perform external audits of his suppliers and subcontractors to assess compliance with the requirements of the approved QA/QC Program and Contract Documents. Factors such as the work schedule, volume, complexity, relative importance, past experience, dollar amount, etc. shall be taken into account for the selection of the suppliers and subcontractors for such audits and determining the scope, frequency and schedule of these audits. The scope frequency and schedule of these audits shall be as approved by the Manager, WTCC QA. The Contractor shall submit an audit schedule to the Manager, WTCC QA within 15 days after award. The Contractor shall make appropriate changes to the audit schedule when warranted due to changed conditions or when directed by the Manager, WTCC QA. The Contractor shall submit the revised schedule to the Manager, WTCC QA within 30 days of the change. The Manager, WTCC QA must be notified in writing 6-weeks days in advance of the date, time and location of each audit. The Manager, WTCC QA may witness any or all such audits. The audit results shall be documented and used to correct deficiencies and prevent their recurrence. Copies of the audits shall be made available to the Manager, WTCC QA, as required.

L. Inspection And Testing Plan

The Contractor's CQP shall include an inspection and testing plan subject to approval by the Authority to verify that items conform to the requirements of the Contract Documents. The Contractor's plan shall contain a list of tests, which the Contractor is to perform. The list shall give the test name, specification paragraph containing the test requirements and identify if the Contractor, subcontractor or supplier is responsible for each type of test. During the life of the contract, the Contractor shall update the plan to

reflect changes in inspection and testing procedures. The Contractor's inspection and testing procedures shall be approved by the Engineer prior to any such inspection or test and shall include test requirements, acceptance criteria and test conditions. Procedures should, as a minimum:

- 1) Identify the characteristics to be inspected, examined, and tested at each activity point;
- 2) Specify inspection and test procedures and acceptance criteria to be used;

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- a. include inspection checklists
- b. identify hold points as described below.

The detailed inspection or test procedures shall, as applicable, include items such as who is responsible for what, how, when, and where for all steps to be performed; what materials, equipment, and documentation are to be used; and how it is controlled. The procedures must be included in the CQP.

The Contractor shall use competent inspection personnel and shall not depend exclusively upon inspections performed by persons performing or directly supervising the work being inspected. Inspection personnel shall not report directly to the immediate foreman or supervisors responsible for constructing or installing the work being inspected. Inspection personnel shall be given the necessary authority and independence to perform their roles effectively.

Personnel performing inspections and tests shall possess a demonstrated competence in the specific area of interest and have an adequate understanding of the requirements. Written guidelines shall be established to assure that suitable education, experience and technical qualifications are maintained for such personnel.

The Contractor shall establish a listing of hold points as part of the inspection and testing plan for the approval of the Authority. Hold points are pre-determined inspection points for work in progress, which may become inaccessible as the work progresses, where the Contractor shall “hold” until the Authority verifies that the inspection and testing has been performed. In-process inspection activities shall be planned and performed to ensure the quality of the finished work. Any non-conforming conditions shall be tagged, documented, physically segregated to prevent inadvertent use and corrected before continuing.

The Contractor shall demonstrate the acceptability of the construction activities with objective evidence through suitable inspections and testing records. Inspection and testing records shall be prepared, reviewed, safely stored and maintained by the Contractor.

The Contractor shall distinguish between inspected and uninspected items by using suitable control devices. Inspection and test status identification of structures, systems or components should be maintained and controlled from initial receipt through installation to operation of the constructed work.

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M. Control Of Construction Processes

1) The Contractor shall assure that the work complies with the Contract Documents. Controls shall be adequate to cover all construction operations, including both onsite and offsite fabrication, shall be integrated with the provisions of the clause entitled "Progress Schedule" and shall provide written records indicating that the results obtained for the various phases described below are documented and maintained. The controls shall include at least three phases of control for all definable features of work as follows:

PREPARATORY PHASE - This phase occurs prior to beginning any work on any definable feature of work.

A definable feature of work is a task which is separate and distinct from other tasks and has separate control requirements.

It shall include the following:

- a. review of the contract requirements;
- b. check to assure that all materials and/or equipment have been tested, submitted and approved;

2) A check to assure that provisions have been made to provide required control inspection and testing; examination of the work areas to ascertain that all preliminary work has been completed; a physical examination of materials, equipment and sample work to assure that they conform to approved shop drawings or submitted data and that all materials and/or equipment are on hand.

INITIAL PHASE - This phase must be accomplished at the beginning of a definable feature of work and shall include the following:

- a) check of preliminary work (first item inspection) to: verify full compliance establish acceptable levels of workmanship resolve all discrepancies

IN-PROCESS PHASE

- a) Daily checks shall be performed to assure continuing compliance with contract requirements and shall include the following: Control testing until the completion of the

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particular feature of work Suitable maintenance of equipment used in construction to ensure continuing process capability.

b) The Contractor shall ensure that the work is performed in accordance with codes and standards that would apply if the Authority were a private corporation and with specifications and other special contractual requirements using qualified personnel and/or equipment. The procedure shall identify equipment to be used as well as any special requirements to be observed.

N. Control Of Measuring And Testing Equipment

1) The CQP shall describe the methods for ensuring that equipment used for measuring and testing is in calibration or condition to provide accurate test or inspection results. At intervals established to ensure continued validity, measuring devices shall be verified or calibrated against certified standards that are traceable to national standards or naturally occurring physical constants.

2) The Contractor shall use methods to assure proper handling, storage, care and control of measuring and testing equipment in order to maintain the required accuracy of such equipment. Material and testing equipment that are consistently found to be out-of calibration or have been subjected to possible damage shall be identified as nonconforming and be removed from service, repaired or replaced. The CQP shall also contain a contingency plan in the event inaccurate measurement may have occurred as evidenced by measuring and testing equipment found to be out of calibration at specified interval.

3) The Contractor shall also assure that all measuring and testing equipment selected for measurements, tests, or calibration is of the proper range, type, and is controlled, adjusted, and maintained at specified intervals identified in the CQP or prior to use to assure conformance to the established requirements or predetermined accuracy. The equipment shall have some indication attesting to the current calibration status and show date (or other basis) on which inspection or recalibration is next required and by whom it was last calibrated.

4) The Contractor's measuring and testing equipment shall be made available for use by the Authority. The Contractor shall make personnel available for operation of the equipment if requested by the Authority.

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O. Preventive Action and Control Of Nonconforming Conditions

1) The CQP shall contain provisions for implementing preventive and corrective actions and identifying, recording, controlling and correcting nonconforming items, including provisions for the reinspection and retesting of repaired and reworked items to the original requirements. Any "Use-As-Is" determinations shall require approval by an Engineer who represents the Authority. It is the Contractor's responsibility to promptly identify, tag and segregate items detrimental to quality to prevent inadvertent use.

2) The Contractor shall investigate the cause of the nonconformance and take appropriate corrective actions to prevent recurrence. The identification, determination, justification for planned actions and actions taken shall be documented on a nonconformance report. At a minimum, dispositions for non-conformances shall include 'Rework', 'Repair', 'Use-As-Is', 'Scrap' or 'Reject'. 'Reworked' and 'repaired' items shall be re-inspected using a documented procedure to ensure the item meets requirements. All 'Repair' and 'Use-As-Is' dispositions shall be reviewed and approved by an Engineer representing the Authority prior to any corrective action. Personnel performing evaluations to determine conformance shall have demonstrated competence in the specific area of interest have an adequate understanding of the requirements and have access to pertinent background information.

3) A procedure to describe the process for corrective actions to address issues identified during audits or other activities shall be included in the CQP. The procedure must include the analysis of any process/actions to help identify the cause of the condition, identify the corrective actions needed and specific actions needed to prevent recurrence. Actions to ensure that corrective actions are taken and are effective must also be described.

P. Documentation OF Quality Records

1) The CQP shall contain provisions for identification of types of quality records to be maintained, their retrievability and retention periods and shall include a sample or blank copy of all quality records and checklists to be utilized on this Project. The Contractor shall maintain quality records as evidence that all of its activities and those of its subcontractors and suppliers comply with the requirements of the CQP. Additionally, the Contractor shall maintain records as evidence that: The item meets the requirements of the Contract Documents; Personnel, procedures and equipment for special construction processes are qualified; Selection and

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surveillance of subcontractors and suppliers are performed; Corrective action and action taken to prevent recurrence is being taken for nonconforming conditions.

2) Additional Types of Records to be Maintained:

a) Contractor Internal and External Audit records which: Provide a schedule of Contractor and subcontractor/supplier audits Document quality programs, plans and procedures audited. Identify items and services for which audit was performed Reveal results obtained. Demonstrate analyses of audit data for use in corrective action

b) Inspection and Test records which: Include completed inspection checklists signed by the QCM; Include nonconformance reports and logs; Identify inspector or data recorder; Identify date of inspection or test; Reference drawing number and specification reference; Define applicable requirements; Identify specific inspections or tests performed and results

c) Daily Reports Under the provisions of the Contract, the Contractor shall prepare reports on a daily basis for the Work Site. This report shall also include a brief description of any inspections of the work performed. If an inspection or test was performed a copy of the inspection or test record must accompany the report. The report with the attachment must be forwarded to the Engineer's office by the end of the next business day. The report must be filed for each site including days in which no work was performed. The report must be signed and dated by the QCM or the Contractor's designated representative.

d) Inspection and test records shall be maintained for both conforming and nonconforming work. Unless otherwise required by the Authority the Contractor shall retain all quality records for a minimum period of three years after substantial completion and make them available to the Authority upon request.

Q. Contractor Internal Audit

The Contractor shall perform internal audits of his own Quality Management System to assess compliance with the requirements of the approved QC Program and the Contract Documents. The scope of such audits shall be commensurate with factors such as the work schedule, volume, complexity, relative importance of work activities, etc. The audits shall be performed

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on a quarterly basis and shall begin within 6 months of the acceptance of the Proposal. An audit schedule shall be submitted to the Authority within 45 days after the acceptance of the Proposal. The Contractor shall change the schedule when warranted due to changed conditions or when directed by the Authority. The Contractor shall submit the revised schedule to the Authority's Manager, WTCC QA within 30 days of the change. The Authority's Manager, WTCC QA must be notified in writing 10 days in advance of the date, time and location of each audit. The Authority's Manager, WTCC QA may witness any or all such audits. The audit results shall be documented and used to correct deficiencies and prevent their recurrence.

R. Training

- 1) The Contractor shall provide all required training. Such training shall occur within 30 days after acceptance of the Proposal.
- 2) The Contractor shall notify the Authority at least one week in advance of the date, time and location of the above training. The Authority shall have the option of attending the training. Records shall be kept of the above training documenting the date, time, duration, location, attendees, trainer's name and qualifications, and the items discussed. Copies of these records shall be forwarded to the Authority not later than one week after such training occurs.
- 3) This requirement for training is in addition to other training requirements contained in this Contract.

S. Statistical Analysis

- 1) The Contractor shall identify, where appropriate, the need for statistical techniques to verify the acceptability of construction process capabilities and work characteristics. These include, but are not limited to: control charts, sampling plans and trend analyses of non-conformances.
- 2) The Contractor may employ, subject to approval of the Authority, sampling inspection in accordance with applicable nationally recognized standards or other statistically valid plans.

T. Design Process Control

- 1) Procedures shall be established, documented, implemented and maintained to control the preparation, review and approval of design work required by this Contract. Design work includes, but is not limited to, the preparation of Shop Drawings, Record Drawings ("As-Built" drawings), working drawings, design details and engineering analyses/calculations as well as software development.

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- 2) Persons performing design work shall be identified, their responsibilities defined, their qualifications stated and a description of the resources assigned for their use shall be given within the procedures.
- 3) The procedures shall include methods to identify and document input requirements relating to the scope of design work so as to reflect applicable statutory, regulatory and contract requirements as well as industrial codes or Authority standards, if any.
- 4) The procedures shall state how design work outputs shall be documented, verified against the design input requirements and validated as part of the approval process. The procedures shall contain a formal program of in-process design work review(s) that shall identify: the stages of design at which work review(s) shall occur, the representatives of all concerned functions that shall participate in the review(s) and the documentation of the review(s) results.
- 5) The procedures shall include methods to identify, document and review any and all changes, revisions or modifications to the original design work prior to resubmittal for approval.

EXHIBIT B

WTC – SITE SECURITY REQUIREMENTS

Site Security Requirements
World Trade Center Site
New York City, NY

Access to the WTC Site

All personnel, vehicles, and materials entering the site shall comply with the requirements described herein. The word “vehicle” as used herein shall be construed to include all self-propelled or towable vehicles or equipment whatsoever.

The requirements described herein apply to all contractors, subcontractors, vendors, suppliers and all others performing work or providing services or materials or equipment within the site. All such entities are required to coordinate and cooperate with each other and with the Authority in planning and performing the required activities. The facilities and services provided by the Authority are to be shared in common by all parties requiring access to the site. The direct costs to perform the screening and credentialing described herein shall be reimbursed by the Authority. All other costs, including but not limited to compensation for time spent by the contractors or their employees in performing any of the activities described herein, shall be borne by the contractors.

A) Personnel Access

All persons accessing the site shall have been background screened so as to ascertain that they satisfy the requirements set forth in the “WTC ID Process-Disqualifying Crimes” document which is attached hereto as Exhibit A. The Authority will conduct such background screening upon written request of the contractor on behalf of the individual, or an individual himself/herself. The background screening is contingent upon the following:

- Every individual requesting access to the site must agree to have a background screening.
- Every individual shall be required to fill out and sign a background screening application and consent form.
- Individuals must be citizens of the U.S., Lawful Resident Aliens, or otherwise lawfully permitted to work in the U.S.
- Every individual shall be required to complete the Secure Worker Access Consortium Application (www.secureworker.com)

The Authority shall conduct the background screening and shall report its findings in a timely manner. Successful screenings are expected to be completed within 3 business days. Individuals found to have received a “fail” classification due to any reason shall be prohibited from entering the site.

After successful background screening individuals will be required to complete a one-hour training period and to pass a test regarding the WTC Site rules and regulations. Upon successful completion a personal identification card shall be issued by the Authority to the individual. The individual’s access to the site shall be limited to the level deemed appropriate by the Authority.

As part of the individual credentialing and identification process each individual may be required to provide biometric data, which may include finger-printing, hand geometry, and/or iris mapping. Such data shall be developed and recorded by the Authority for its sole use on this particular WTC Project, and shall be invalidated when no longer needed. The individual is prohibited from the site once the data has been invalidated.

Personnel entry to and exit from the site shall be through a number of Personnel Screening Portals provided, installed, maintained, and operated by the Authority. It is expected but not guaranteed that

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there shall be at least two such portals distributed around the perimeter of the site. The Authority shall operate, relocate, and if necessary reconfigure, the portals to accommodate the work to the greatest degree feasible.

Personnel entering the site will be required to present their individual identification cards for entry. The ID cards may contain the personal biometric data that will be used to process individuals thru a turnstile. In all cases packages and tools are subject to inspection at all times. Individuals may be randomly screened.

Personnel who have not been background screened and approved to enter the site as described above, either because the background screening process has not yet been completed or because a permanent ID card is not being sought due to the infrequency of use, may nevertheless be allowed onto the site. For this purpose the Authority will provide, install, maintain, and operate credentialing stations at or near the WTC Site. The Authority will issue a Temporary ID card to the individual upon the following conditions:

- The contractor requests the Temporary ID card on behalf of the individual. This request must be made by a permanently credentialed representative of the contractor who must accompany and vouch for the individual requiring the Temporary ID card.
- The individual presents two (2) forms of personal identification. One (1) such ID must be a government issued Photo ID such as a current driver's license or US Passport.
- The individual must be a citizen of the U.S., a lawful Resident Alien, or otherwise lawfully permitted to work in the U.S.

The Temporary ID cards will allow access to the site for a period not to exceed five (5) business days. Every Temporary ID cardholder's person shall be inspected, together with any packages, tools or equipment he/she intends to bring onto the site.

The contractor shall notify the Authority of personnel terminations or reassignments so that access credentials can be invalidated as soon as no longer needed. The Authority may, at any time for any reason, invalidate credentials allowing individuals access to the site. In all instances, where the Authority issued credentials are no longer valid, the Contractor is responsible for ensuring that they are returned to the Authority in a timely manner.

B) Vehicle Access

All vehicles, with their contents, entering the site shall have been screened by the Authority prior to being allowed access to the site. Such screening shall be for the purposes of validating that the vehicle requesting entry is in fact what it is stated to be, and that it contains or includes no item or material considered by the Authority to be, actually or potentially, deleterious to the site. All personnel driving, managing or accompanying the vehicles and their contents, shall be subject to the same conditions described above for all personnel, and shall not be allowed entry to the site except in conformance therewith.

The Authority shall provide, install, maintain, and operate vehicle Screening access points and adjacent off site Vehicle Screening Facilities. These Facilities shall be located at the points of entry to the site best placed" to accommodate the construction. There are expected, but not guaranteed, to be four such

Site Security Requirements
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points at all times. The Authority shall operate, relocate, and reconfigure as required, the access points to the site to accommodate the work to the greatest degree possible.

In order to maintain orderly access to the site and not impact the local streets and or the arterials the contractor, in coordination with the Authority, shall be responsible for scheduling “on time “ deliveries of all vehicles requiring access to the site to include deliveries covered by the “Trusted Vendor” program. Important: “Vehicles are not allowed to utilize the local streets or arterials for lay by or staging purposes” unless approved per NYCDOT permit. The Contractor shall notify the Authority of all deliveries a minimum of 24 hours in advance. Notification for deliveries shall be made by the contractor in writing (e mail is acceptable), in a format to be determined by the Authority. Such request shall include, at a minimum, the following information:

- Vehicle Registration and Insurance information. (Copies to be submitted to the Authority).
- Description of vehicle and manifest of its contents.
- Identity of driver and other accompanying personnel.
- Proposed time for arrival at site.
- Proposed point of entry to site.
- Description and duration of activity while on site.

Requests for screening of oversize loads are subject to the same requirements except that 72 hours notice may be required.

The contractor shall be responsible to ensure that the vehicle to be screened presents itself, together with all required documentation, at the assigned location and time. Failure to do so, and the resulting delays, that may require rescheduling of the appointment for screening, shall be the sole responsibility of the contractor. If a particular vendor, supplier, contractor, or other entity is consistently late or does not supply the required information for scheduled screenings, in the sole opinion of the Authority, the Authority may institute different requirements that it deems necessary to avoid or mitigate future delays.

It is the intent of the Authority in order to reduce on site screening time and provide flexibility in the scheduling of deliveries that the contractor will be allowed to substitute or add a critical delivery under the following conditions:

- The delivery does not conflict with other scheduled deliveries nor is disruptive to on going site activities.
- The vendor/vehicle/driver is in the “Trusted Vendor” program

It is the intent of the Authority to establish a “Trusted Vendor” program. The “Trusted Vendor” program will include the enrollment of vehicles and their drivers in order to expedite their access to the site. These types of vehicles will be primarily company owned vehicles and trucks such as concrete, tanker, haul, heavy construction equipment and other delivery trucks, which frequent the site. These vehicles shall be required as previously outlined to schedule deliveries in advance and if requested, provide sufficient time to allow the Authority adequate time to determine and provide the necessary pre-screening.

Site Security Requirements
World Trade Center Site
New York City, NY

For “Trusted Vendor” screening the vehicle shall present itself at the assigned place within the allotted timeframe. Screening shall include:

- Verification of vehicle and personnel identity and credentials.
- Physical examination of the vehicle including the undercarriage, and its contents, as deemed necessary by the Authority.

Upon successful screening the vehicle will be allowed direct entry to the site.

For vehicle companies wishing to participate in the “Trusted Vendor program” the company will be required to provide the information as previously outlined for the vehicle – identify and have credentialed the driver or group of drivers in accordance with the credentialing requirements, assign a supervisory employee (Trusted Individual) of the firm who will over-see the loading and dispatching of the vehicles and be willing to be subject to a bi-annual audit of their procedures.

C) Exhibits

- A. WTC ID Process-Disqualifying Crimes June 2006

Site Security Requirements
World Trade Center Site
New York City, NY

EXHIBIT A

WTC Identification Process - Disqualifying Crimes

June 2006

Standard Level Access for Unescorted Access to Secure Access Control Areas

Individual workers must agree to have a background check by filling out and signing a background screening application and consent form.

Identity Validation Check will be completed to determine that the individual is who the individual says he/she is.

Individual must be a United States Citizen, Lawful Resident alien, or otherwise lawfully permitted to work in the United States.

Validate applicant-supplied data to assess truthfulness. Willful falsification or omission disqualifies individual.

Identify criminal, terrorist, or other security-related information.

List of Disqualifying Criminal Offenses for Access to the World Trade Center Site

(a) Permanent disqualifying criminal offenses. An individual will be permanently disqualified from receiving credentials to access the World Trade Center Site if he or she is convicted, or found not guilty by reason of insanity, of any of the following crimes:

1. Violation(s) of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. 1961, et seq., or a State law that is comparable.
2. A crime listed in 18 U.S.C. Chapter 113B-Terrorism, or a State law that is comparable.
3. Espionage
4. Sedition
5. Treason
6. Unlawful, possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device, or hazardous materials.
7. Conspiracy or attempt to commit any of the above offenses.

(b) Interim disqualifying criminal offenses. The crimes listed in paragraphs (b)(1) through (b)(3) of this section are disqualifying if either of the following factors is true: the applicant was convicted or found not guilty by reason of insanity of the crime in a civilian or military jurisdiction, within the 10 years preceding the date of application; or the applicant is currently on probation or parole for the crime regardless of the date of conviction.

1. Unlawful sale, distribution, manufacture, import or export of a controlled substance that resulted in the conviction of an A Felony in the New York State Penal Law, or any comparable law in any State, or comparable Federal Law.
2. Theft, dishonesty, fraud, extortion, or misrepresentation.
3. Conspiracy or attempt to commit any of the above crimes listed in (b).

Site Security Requirements
World Trade Center Site
New York City, NY

(c) Interim disqualifying criminal offenses. The crimes listed in paragraphs (c)(1) through (c)(2) of this section are disqualifying if either of the following factors is true: the applicant was convicted or found not guilty by reason of insanity of the crime in a civilian or military jurisdiction, within 5 years preceding the date of application; or the applicant is currently on probation or parole for the crime regardless of date of conviction.

1. Violation of Felony Offenses (as defined in the New York State Penal Law 70.02) or any comparable law in any State.
2. Conspiracy or attempt to commit any of the above crime.

NOTE: An individual will be disqualified from receiving credentials to the WTC site if he or she is wanted or under indictment in any civilian or military jurisdiction for any of the crimes listed above until the want or warrant is released. Additionally, a person will not receive credentials if he or she is on the Terrorist Watch List.

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World Trade Center Site
New York City, NY

EXHIBIT A
WTC Identification Process - Disqualifying Crimes
June 2006

Medium Level Access for Unescorted Access to Secure Access Control Areas

Individual workers must agree to have a background check by filling out and signing a background screening application and consent form.

Identity Validation Check will be completed to determine that the individual is who the individual says he/she is.

Individual must be a United States Citizen, Lawful Resident alien, or otherwise lawfully permitted to work in the United States.

Validate applicant-supplied data to assess truthfulness. Willful falsification or omission disqualifies individual.

Identify criminal, terrorist, or other security-related information.

No convictions against below listed 49CFR 1542.209 (d) within seven (7) years preceding the date of application, except as noted*

- (13) Murder.
- (14) Assault with intent to murder.
- (15) Espionage.
- (16) Sedition.
- (17) Kidnapping or hostage taking.
- *(18) Treason.
- (19) Rape or aggravated sexual abuse.
- *(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- ** (21) Extortion.
- ** (22) Armed or felony unarmed robbery.
- (23) Distribution of, or intent to distribute, a controlled substance.
- (24) Felony Arson.
- (25) Felony involving a threat.
- (26) Felony involving-
 - (i) Willful destruction of property;
 - ** (ii) Importation or manufacture of a controlled substance;
 - ** (iii) Burglary;
 - ** (iv) Theft;
 - ** (v) Dishonesty, fraud, or misrepresentation;
 - ** (vi) Possession or distribution stolen property;
 - (vii) Aggravated assault;
 - ** (viii) Bribery; or
 - (ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment: of more than 1 year; or
- (27) Violence at international airports;
 - (a) Terrorism.

Site Security Requirements
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- * (b) RICO (Racketeer Influenced and Corrupt Organizations Act).
 - (c) A crime involving a severe transportation security incident.
 - (d) Felony involving-
 - (i) Smuggling;
 - (ii) Immigration violations;
 - (28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.
-

Note * No convictions in their lifetime since birth

Note ** No convictions within the past ten (10) years preceding the date of this application

Site Security Requirements
World Trade Center Site
New York City, NY

EXHIBIT A
WTC Identification Process - Disqualifying Crimes
June 2006

High Level Access for Unescorted Access to Secure Access Control Areas

Individual workers must agree to have a background check by filling out and signing a background screening application and consent form.

Individual must be a United States Citizen or a Lawful Resident Alien.

Identity Validation Check will be completed to determine that the individual is who the individual says he/she is.

Validate applicant-supplied data to assess truthfulness. Willful falsification or omission disqualifies individual.

Identify criminal, terrorist, or other security-related information.

No convictions against below listed 49CFR 1542.209 (d) within ten (10) years preceding the date of application, except as noted*

- (1) Forgery of certificates, false marking of aircraft, and other aircraft regulation violation;
- (2) Interference with air navigation;
- (3) Improper transportation of a hazardous material;
- (4) Aircraft piracy;
- (5) Interference with flight crewmembers or flight attendants;
- (6) Commission of certain crimes aboard aircraft in flight;
- (7) Carrying a weapon or explosive aboard aircraft;
- (8) Conveying false information and threats: (e.g., bomb threats, explosives in briefcase, etc. in security areas);
- (9) Aircraft piracy outside the special aircraft jurisdiction of the United States;
- (10) Lighting violations involving transporting controlled substances;
- (11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements;
- (12) Destruction of any aircraft or aircraft facility;
- (13) Murder.
- (14) Assault with intent to murder.
- *(15) Espionage.
- *(16) Sedition.
- (17) Kidnapping or hostage taking.
- *(18) Treason.
- (19) Rape or aggravated sexual abuse.
- (20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- (21) Extortion.
- (22) Armed or felony unarmed robbery.
- (23) Distribution of, or intent to distribute, a controlled substance.

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- (24) Felony Arson.
- (25) Felony involving a threat.
- (26) Felony involving-
 - (i) Willful destruction of property;
 - (ii) Importation or manufacture of a controlled substance;
 - (iii) Burglary;
 - (iv) Theft;
 - (v) Dishonesty, fraud, or misrepresentation;
 - (vi) Possession or distribution stolen property;
 - (vii) Aggravated assault;
 - (viii) Bribery; or
 - (ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment: of more than 1 year; or
- (27) Violence at international airports:
 - *(a) Terrorism.
 - *(b) RICO (Racketeer Influenced and Corrupt Organizations Act).
 - (c) A crime involving a severe transportation security incident.
 - (d) Felony involving-
 - (i) Smuggling;
 - (ii) Immigration violations;
- (28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.

Note * No convictions in their lifetime since birth

THE PORT AUTHORITY OF NY & NJ

WORLD TRADE CENTER

**SITE WIDE ASBESTOS, LEAD AND UNIVERSAL
WASTE ABATEMENT VIA WORK ORDER**

MASTER AGREEMENT # WTC XXX.XXX

2013

THE PORT AUTHORITY OF NY & NJ

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Lillian D. Valenti, Director
Procurement

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Deputy Chief of Capital Planning/
Director, WTC Construction

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Exhibit A: Contractor Quality Program Requirements

Exhibit B: WTC Site Security Requirement

FORM OF CONTRACT

CHAPTER I

GENERAL PROVISIONS

DEFINITIONS

To avoid undue repetition, the following terms whenever they occur in this Form of Contract or any of the other papers forming a part of the Contract shall be construed as follows:

“Bid, Bidder” for the purpose of the Contract shall mean the same as Proposal, Proposer.

"Contract" shall mean, in addition to this Form of Contract, the Information for Bidders, the Bid, the Authority's acceptance, the Specifications and the Contract Drawings (including written addenda issued over the name of the Chief Engineer), all of which are made part hereof as though herein set forth in full. The Contract as so defined shall constitute the complete and exclusive statement of the terms of the agreement between the parties and the Contract may not be explained or supplemented by course of dealing, usage of trade or course of performance.

The term "days" or "calendar days" in reference to a period of time shall mean consecutive calendar days, Saturdays, Sundays and holidays, included.

The term "construction site" or words of similar import shall mean One World Trade Center and the vicinity thereof.

"Work" shall mean all structures, equipment, plant, labor, materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for or incidental to performing clean-up, removal and off-site disposal of asbestos, lead and universal waste materials and related other Work, at the World Trade Center and the vicinity thereof in New York, New York, all as directed by the Engineer and in accordance with Work Order(s) issued by the Engineer; and "performance of Work" and words of similar import shall mean the furnishing of such facilities and the doing of such things.

“Contractor’s Fee for Net Cost Work” shall mean the amounts computed from the percentage applied to the Net Cost of the work as computed by the Engineer in accordance with the Form of Contract clause entitled “Contractor’s Compensation for Net Cost Work.”

“Net Cost” shall mean the amount(s) computed by the Engineer in accordance with the provisions of the Form of Contract clause entitled “Net Cost”.

“Lump Sum Work” shall mean all costs, excluding Contractor’s General Overhead and profit, associated with a Work Order which provides for payment by Lump Sum.

“Contractor’s General Overhead” shall mean general overhead costs, i.e., those indirect costs that cannot be specifically identified to the completion of a Work Order and include, but are not limited to the following: advertising, bank fees, car and truck expenses for office and general management personnel, charitable contributions, non-project site computer and office furniture, depreciation for non-project site assets, dues and memberships, employee wages, salaries and benefits for office and general management personnel, employee retirement for office and general management personnel, employee recruiting, employee training, employee taxes for office and general management personnel, home office general liability insurance, key man insurance, workers compensation, and other insurance not project related, interest expense on loans, janitorial and cleaning for non-project sites, legal and professional services, meals and entertainment, office supplies used by office and general management personnel, office rent and utilities, postage and delivery unrelated to project, promotional materials, publications and subscriptions, repairs and maintenance for office facilities and office capital equipment, taxes and licenses, telephone, travel, etc., and shall include the costs of all other expenses whatsoever even though greater than anticipated by either party, including but not limited to the Contractor’s home office expenses, plant, overhead, interest; any insurance procured to supplement or in excess of insurance procured by the Authority; and all other items of cost and expense whether similar to or different from those herein named. “Overhead” does not include costs attributable to other projects or Work Orders.

“Work Order” shall mean the document issued by the Engineer with provisions as described herein in the clause of the Form of Contract entitled “Work Orders”.

“Notification” shall mean a telephone call followed by a telecommunication facsimile or electronic communication from the Authority to the number(s) or email(s) designated by the Contractor or to such other number(s) or email(s) as he may subsequently designate pursuant to the terms of this Contract and shall include, but not be limited to, the Work Order, the location of the Authority contact person, and a general description of the Work to be performed; and omissions from such general description shall not alter or reduce a requirement for Work otherwise stipulated elsewhere herein or in the Work Order.

“Specifications” shall mean Division 1 of the Specifications included as part of this Contract Booklet and specifications, if any, annexed to the Work Order(s) issued by the Engineer which shall be complied with by the Contractor for all the Work performed under this Contract when so annexed.

"Contract Drawings" shall mean the Contract Drawings designated in the clause of the Specifications entitled "Contract Drawings", if any, and shall include any future alterations and revisions of said drawings and any additional drawings issued by the Engineer.

"Shop Drawings" shall mean all drawings, diagrams, illustrations, schedules, including supporting data, which are specifically prepared for this Contract and submitted by the Contractor pursuant to the requirements of the Specifications or the Engineer to illustrate some portion of the Work. The terms "shop drawings", "placing drawings" and "working drawings" are used interchangeably in this Contract.

"Catalog Cuts" shall mean all standard drawings, diagrams, illustrations, brochures, schedules, performance charts and instructions submitted by the Contractor pursuant to the requirements of the Specifications or the Engineer to illustrate some portion of the Work.

"Director of Procurement" shall mean the Director of Procurement of the Authority for the time being, or her successor in duties, acting either personally or through her duly authorized representatives acting within the scope of the particular authority vested in them.

"Chief Engineer" shall mean the Chief Engineer of the Authority for the time being, or his successor in duties, acting personally.

"Director" shall mean the Director of World Trade Center Construction for the time being, or his successor in duties for the purpose of this Contract, acting personally or through his authorized representative for the purpose of this Contract.

"Engineer" shall mean the Chief Engineer, acting either personally or through his duly authorized representatives acting within the scope of the particular authority vested in them.

"Assistant Chief Engineer for Construction" shall mean the Assistant Chief Engineer for Construction of the Authority for the time being, or his successor in duties, acting personally.

"Engineer of Construction" shall mean the designated Engineer of Construction for the facility at which the Work is being performed or his successor in duties, acting personally.

"Inspector" shall mean any representative of the Engineer designated by him as Inspector and acting within the scope of the particular authority vested in him.

The term "permanent construction" shall include all construction, installation, structures, equipment and materials (including materials and equipment, if any, furnished by the Authority) to be constructed, installed or left by the Contractor at or about the construction site (or elsewhere in the possession of the Authority) after the completion of the Work (whether or not they are yet delivered or installed), even though they are subsequently to be removed by others.

The terms, "permanent installation", "permanent structure", "permanent materials", and words of similar import shall have the same meaning as the term "permanent construction".

"Subcontractor" shall mean anyone who performs Work (other than or in addition to the furnishing of materials, plant or equipment) at or about the construction site, directly or indirectly for or in behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services or who performs Work which consists only of the operation of construction equipment of which he is the lessor.

"Materialman" shall mean anyone who furnishes materials, plant or equipment to the Contractor or any subcontractor for use at or about the construction site in the performance of Work.

"Materialman" or "subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent or the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor himself.

"Workingman" or "workman" shall mean any employee of the Contractor or of a subcontractor who performs personal labor or personal services at the construction site.

"Notice" shall mean a written notice.

Whenever they refer to the Work or its performance, "directed", "required", "permitted", "ordered", "designated", "prescribed" and words of similar import shall mean directed, required, permitted, ordered, designated or prescribed by the Engineer; and "approved", "acceptable", "satisfactory" and words of similar import shall mean approved by or acceptable or satisfactory to the Engineer; and "necessary", "reasonable", "proper", "correct" and words of similar import shall mean necessary, reasonable, proper or correct in the judgment of the Engineer.

Whenever "including", "such as" or words of similar import are used, the specific things thereafter enumerated shall not limit the generality of the things preceding such words.

GENERAL AGREEMENT

The Contractor agrees to perform the services required under this Contract in accordance with Work Order(s) issued by the Engineer; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon him by this Contract.

Subject to the clause hereof entitled "Withholding of Payments" the Authority agrees to pay the Contractor and the Contractor agrees to accept from the Authority in full consideration for the

performance by the Contractor of his duties and obligations under this Contract and the whole thereof, the compensation provided for in the Form of Contract clauses contained in Chapter II entitled "Compensation and Payments".

This Contract is one entire Contract for the accomplishment of the results and the doing of the things specified in this numbered clause and is not separable. Similarly, the Contractor's compensation is one entire compensation for entire performance on his part.

The Contractor represents that he possesses the home office communication facilities and employee assignments or office services necessary for Notification, specialized skill and extensive experience in the purchase of materials and rental of tools, construction aids and equipment which skill and experience he will use to execute all purchases and rentals, as aforesaid, so as to achieve the lowest possible price for such material, tools, construction aids and equipment and substantial savings to the Authority in time and money, and the Authority in executing this Agreement has relied upon such representations.

The Contractor shall be deemed to occupy a position of trust and confidence with respect to the Authority and to have the obligation of protecting the Authority's interests in all dealings related to performance of the Contractor's services and of keeping the Authority's obligations and expenses to a minimum consistent with satisfactory performance of his Agreement. The Contractor shall not directly or indirectly either solicit or receive, and shall insure that no subsidiary or affiliate of the Contractor or any Director, officer or employee of any of the foregoing shall directly or indirectly either solicit or receive, anything of value from any person in connection with the Work whether or not actually given or to be given in consideration for any act or forbearance to act by the Contractor.

The Contractor shall make prompt and full disclosure in writing to the Engineer of any interest which the Contractor may have, or which any subsidiary or affiliate of the Contractor or any Director, officer or employee, at or above the equivalent rank of foreman, or any of the foregoing may have, direct or indirect and present or potential, in any contractor, materialman or other person performing any part of the Work and in any product, process, equipment, materials, system or other thing to be used in such Work. Inasmuch as the Authority is a public agency dealing with the public funds and is retaining the Contractor in reliance on the Contractor's special experience, expert advice and skill in protecting the Authority's interests, the Contractor shall be held to the highest degree of good faith in its dealing with the Authority.

The enumeration in this Form of Contract and in the Specifications of particular things to be furnished or done at the Contractor's expense, or without cost or expense to the Authority, or without additional compensation to the Contractor shall not be deemed to imply that only things of a nature similar to those enumerated shall be so furnished and done; but the Contractor shall perform all Work as required without other compensation than that specifically provided,

whatsoever changes may be made in the Contract Drawings and Specifications, if any, whatsoever Work may be required in addition to that required by the Work Order(s) issued by the Engineer, and whatsoever obstacles of unforeseen conditions may arise or be encountered.

WORK ORDERS

Work under this Contract shall be performed upon Notification, with confirmation by the Engineer in a Work Order. The Contractor shall do all things which the Engineer deems necessary or convenient for the Work, in such manner and sequence as the Engineer deems best, taking all precautions against injuries to persons, property or traffic, replacing at his own expense all Work unsatisfactory to the Engineer; all in strict accordance with all documents made part of the Work Order, including but not limited to, the Specifications, Contract Drawings, if any, and sketches or other drawings.

The Contractor shall provide communication facilities at his home office and shall arrange employee assignments or provide office services so that he can receive and provide appropriate response to Notifications from the Engineer, twenty-four (24) hours a day, seven days a week, including Saturdays, Sundays and Holidays.

The parties hereto expressly agree that the Authority cannot anticipate the number or type of Work Orders that may be issued by the Engineer under this Contract.

It is anticipated, but not guaranteed, that the Engineer will issue Work Orders which will require Work to be performed concurrently at multiple locations at the construction site.

Unless specifically directed otherwise in the Notification from the Engineer, the Contractor shall be available at the construction site with sufficient and appropriate labor, equipment and material to expeditiously perform the Work, in the sole judgment of the Engineer, within the time stipulated in each Work Order.

Authority ACCESS TO RECORDS

The Authority shall have access during normal business hours to all records and documents of the Contractor relating to any amounts for which the Contractor has been compensated, or claims he should be compensated, by the Authority by payment determined on any basis other than by payment of a lump sum or unit price amount agreed upon in writing by the Contractor and the Authority; provided, however, such access shall extend to certified payroll records as described in the clause of the Form of Contract entitled "Prevailing Rate of Wage" regardless of the method by which the Contractor is compensated under this Contract. The Contractor shall obtain for the Authority similar access to similar records and documents of subcontractors. Such access shall be given or obtained both before and within a period of three years after Final Payment to the Contractor; provided, however, that if within the aforesaid three year period the Authority has notified the Contractor in writing of a pending claim by the Authority under or in connection

with this Contract to which any of the aforesaid records and documents of the Contractor or of his subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of 6 years from the date of Final Payment with respect to the records and documents involved.

Upon request of the Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing Work under this Contract, including both citizens and non-citizens.

No provision in this Contract giving the Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which the Authority would have in the absence of such provision.

RENTAL OF CONSTRUCTION EQUIPMENT

The rental of construction equipment shall be subject to all applicable New York sales and use taxes notwithstanding The Authority's status as an Exempt Organization in New York, as such term is defined in section eleven hundred sixteen of the New York State Sales and Compensating Use Tax Act.

The Contractor shall indemnify the Authority against any claim of any kind whatsoever made against the Authority by a lessor of construction equipment and the Contractor assumes the risk of all claims against him by any lessor of construction equipment, including in both cases, claims in connection with a subcontractor.

EXEMPTION FROM NEW YORK STATE AND NEW YORK CITY SALES TAXES

The attention of the Contractor and his subcontractors and materialmen, if any, is directed to the New York State and New York City tax laws, as they apply to the Work of this Contract, and the New York State Department of Taxation and Finance (herein called the "Department") Form ST-120.1, Contractor Exempt Purchase Certificate, available on the Department's website: www.tax.ny.gov/forms/.

Subdivision (a) of section eleven hundred fifteen of the New York State Sales and Compensating Use Tax Act (herein called the "Act") provides contractors with an exemption from sales and compensating use taxes (herein called "Sales Tax") for, among other things:

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen, or adding to, altering or improving real property, property or land of such an organization, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property."

The Authority is an exempt organization of the type described in subdivision (a) of section eleven hundred sixteen of the Act.

In view of the foregoing, the Contractor should not include in his price(s) any amounts for Sales Tax on such tangible personal property (herein called "Exempt Purchases"). The Contractor shall execute and provide his vendors with a properly completed Form ST-120.1 when effectuating such Exempt Purchases.

As provided in the clause hereof entitled "Rental of Construction Equipment", the Contractor's rental of equipment and the Contractor's purchases of tangible personal property that does not become an integral component part of the permanent construction are, in all cases, subject to Sales Tax.

If (i) any claim is made against the Contractor by the State of New York or City of New York for such Sales Tax on Exempt Purchases, or (ii) any claim is made against the Contractor by a materialman or a subcontractor on account of a claim against such materialman or subcontractor by the State of New York or City of New York for such Sales Tax on Exempt Purchases, then the Authority will reimburse the Contractor in an amount equal to the amount of such tax required to be paid in accordance with the Act, provided that:

The Contractor's liability for such Sales Tax is caused solely by a finding by the Department that the Authority is not an Exempt Organization of the type described in subdivision (a) of section eleven hundred sixteen of the Act; and

the Contractor, or the Contractor and any such subcontractor, as the case may be, have complied with such rules and regulations as may have been promulgated relating to the claiming of the exemption from such Sales Tax and have furnished to vendors all the forms and certificates required by the applicable laws, rules and regulations in connection therewith; and

the Authority is afforded the opportunity before any payment of tax is made, to contest said claim in the manner and to the extent that the Authority may choose and to settle or satisfy said claim and such attorney as the Authority may designate is authorized to act for the purpose of contesting, settling and satisfying said claim; and

the Contractor, or the Contractor and any such subcontractor, as the case may be, give immediate notice to the Authority of any such claim, cooperate with the Authority and its designated attorney in contesting said claim and furnish promptly to the Authority and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six years after the date of Final Payment or longer if such a claim is pending or threatened at the end of such six years.

If the Authority elects to contest any such claim, it will bear the expense of such contest.

PERFORMANCE AND PAYMENT BOND

If the Authority shall in its sole discretion so elect at the time of accepting the Contractor's Bid, the Contractor shall furnish a bond for the faithful performance of all obligations imposed upon him by the Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of the Contract. Such bond shall be in the form bound herewith entitled, "Performance and Payment Bond", shall be in a penal sum stipulated in the form bound herewith, and such bond shall be signed by one or more sureties¹ satisfactory to

¹ Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the state(s) in which the construction site is located, whose names appear on the current list of

the Authority. The bond may be executed on a separate copy of such form not physically attached to this Contract booklet. In any case, both the form of bond bound herewith and any unattached executed copy thereof shall form a part of this Form of Contract as though herein set forth in full.

At any time after the opening of Bids, the Authority may give notice to one or more bidders to advise the Authority as to the names of their proposed sureties. Within forty-eight hours thereafter each bidder so notified shall so advise the Authority. The giving of such notice to a bidder shall not be construed as an acceptance of his Bid, and omission to give such notice shall not be construed as an election by the Authority not to require a bond.

If the Authority elects to require the Contractor to furnish a bond, he shall deliver such bond to the Authority within seven days after receipt by him of the acceptance of his Bid, and the sureties thereon shall be as proposed by him, provided, that if the Authority has theretofore given notice to him that his proposed sureties or any of them are not satisfactory, the bond shall be executed by other sureties satisfactory to the Authority.

the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Authority as acceptable as sureties to the Treasury Department. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned list of the Treasury Department of the sureties shall equal or exceed the penal sum of the Performance and Payment Bond.

The Authority shall give notice to the Contractor within ten (10) days after receipt of the Performance and Payment Bond as to whether or not such bond is satisfactory.

In the event of a default by the Contractor in his obligation to furnish a satisfactory bond within seven (7) days after he received an acceptance of his Bid, such default shall entitle the Authority in its discretion to terminate this Contract at any time within forty-five (45) days after the acceptance of the Bid, without any liability on the part of the Authority. Inasmuch as the damages to the Authority resulting from a termination by it upon the failure of the Contractor to furnish a satisfactory bond will include items whose accurate amount will be difficult or impossible to compute, such damages shall be liquidated in the sum of the following amounts:

The excess, if any, of the Contractor's Fee in the Bid finally accepted over that in the Bid of the Contractor.

The expense of such new advertisement of the Contract, if any, as may be deemed necessary by the Authority; and

The sum of \$500 for each day after the receipt by the Contractor of the acceptance of his Bid that the performance of the Contract is not commenced by reason of the failure of the Contractor to furnish the required bond.

In the recovery of the damages above specified, the Authority may proceed against the sum represented by the certified check deposited with it or against the Bid Bond and take such other action as it may deem best in the public interest.

If the Contractor furnishes a bond in accordance with the requirements of the Authority under this numbered clause, the Authority shall reimburse the Contractor for the net amount actually paid by him to the surety or sureties as the premium on such bond. The Contractor shall deliver to the Engineer receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen days after receipt of such evidence satisfactory to the Engineer, the Authority shall pay to the Contractor by check the amount provided in this numbered clause.

If at any time the Authority shall be or become dissatisfied with any surety or sureties then upon any bond furnished in accordance with the requirements of the Authority, or if for any other reason such bond shall cease to be adequate security to the Authority, the Contractor shall, within five days after notice from the Authority so to do, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the Authority to constitute adequate security.

MINORITY AND WOMEN'S BUSINESS ENTERPRISES PROGRAM (MBE/WBE)

The Authority has a long-standing practice of making its contract opportunities available to as many firms as possible and has taken affirmative steps to encourage Minority Business

Enterprises (MBEs) and Women's Business Enterprises (WBEs) to seek business opportunities with it.

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"Minority-owned business" or "MBE" means a business entity which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Women-owned business" or "WBE" means a business which is at least 51 percent owned by one or more women, or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens.

"Minority group" means any of the following racial or ethnic groups:

Black persons having origins in any of the black African racial groups not of Hispanic origin;

Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central, or South American culture or origin, regardless of race;

Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

In the event that any portion of the Work is subcontracted in accordance with the clause of the Form of Contract entitled "Assignments and Subcontracts", every good faith effort to ensure MBE and WBE participation in the Work shall be made and documented. Such good faith efforts shall include at least the following:

- A. Attendance at pre-bid meetings, if any, scheduled by the Authority;**
- B. Utilization of the Authority's Directory of certified MBE/WBEs available on-line (see Notification of M/WBE On-line Directory and Forms in back of Contract booklet) and/or proposing for certification other MBE/WBEs which appear to meet the Authority's criteria for MBE/WBE certification and which are technically competent to perform the Work which the bidder plans to subcontract;**

- C. Active and affirmative solicitation of bids for subcontracts from MBE/WBEs;**
- D. Advertisement in general circulation media, trade association publications and minority-focused media for a reasonable period before bids are due;**
- E. Dividing the work to be subcontracted into smaller portions or encouraging the formation of joint ventures, partnerships or similar arrangements among subcontractors;**
- F. Providing a sufficient supply of drawings and specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review; and**
- G. Utilizing the services of available minority and women's community organizations; contractors' groups; local, State and Federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs.**

Subsequent to acceptance by the Authority of the Contractor's Bid, the Contractor shall use and document every good faith effort to comply with these requirements and to permit his MBE/WBE subcontractors to perform. Such good faith efforts shall include at least the following:

- A. Ensuring that progress payments are made in a timely fashion in accordance with the requirements of this Contract;**
- B. Not requiring bonds from and/or providing bonds and insurance for subcontractors where appropriate;**
- C. Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Authority staff responsible for such participation; and**
- D. Nominating subcontractors for participation in business assistance programs sponsored by the Authority or the Regional Alliance of Small Contractors such as the Loaned Executive Assistance Program (L.E.A.P.).**

Subsequent to acceptance by the Authority of the Contractor's Bid, the Contractor shall also provide the Engineer, at his request, with a trade breakdown schedule showing when the Contractor's MBE/WBE subcontractors are scheduled to perform. The Contractor shall also

submit to the Engineer, on a monthly basis, the Statement of Subcontractor's Payments annexed hereto as Schedule D.

Following approval by the Engineer under the clause entitled "Assignments and Subcontracts" of one or more subcontractors who are either MBEs or WBEs and listed in the MBE/WBE Directory or determined to be "eligible" by the Chief Engineer in accordance with this numbered clause, the Authority may, at its sole option, provide to said approved M/WBEs, without charge, whatever appropriate Contractor services may be available under the L.E.A.P. Program; provided, however, that such Contractor services will only be furnished pursuant to a request in writing from the Director, Office of Business Diversity and Civil Rights of the Port Authority of New York and New Jersey, 233 Park Avenue South - 4th Floor, New York, NY 10003.

Such services will be discontinued following a written request from the Contractor to the Director, Office of Business Diversity and Civil Rights of the Port Authority of New York and New Jersey, to discontinue them.

The L.E.A.P. services include advising on scheduling, purchasing, planning and other aspects of construction to firms to mitigate business or management problems which could negatively impact on their performance. These services do not include engineering or legal advice. The determination as to whether or not to follow the advice given lies solely with the M/WBE subcontractor. Prior to being accepted as a participant in the L.E.A.P. Program, the M/WBE subcontractor will be required to release the Authority and the individuals furnishing Contractor advice of all liability and responsibility in connection therewith.

The Authority has compiled and made available on-line an MBE/WBE Directory which specifies the firms the Authority has determined to be (1) MBEs/WBEs and (2) experienced in performing work in the trades and contract dollar ranges indicated in the Directory. The Authority makes no representation as to the financial responsibility of such firms or their ability to perform Work required under this Contract. Subject to the following paragraph, only MBEs/WBEs listed in the Directory will count toward the MBE/WBE participation.

If the Contractor wishes to perform a portion of the Work through a firm not listed in the Directory ² but which the Contractor believes should be eligible because it is (1) an MBE/WBE, as defined above and (2) technically competent to perform portions of the Work or the Contractor believes it is such a firm, the Contractor shall submit to the Director, Office of Business Diversity and Civil Rights of the Port Authority of New York and New Jersey, a written request for a determination that the proposed firm is eligible. This shall be done by

² The following organizations may be able to refer the Contractor to MBEs/WBEs who are technically competent to perform portions of the Work. Any referrals which are not listed in the Directory shall be submitted to the Authority for a determination as to eligibility as provided above.

completing and forwarding a) the form labeled "Schedule A" and, if appropriate, "Schedule B" which are annexed hereto and form a part hereof and b) technical references of jobs completed of similar scope and complexity on the form annexed hereto and made a part hereof labeled "MBE/WBE Approval Request" and such other information as may be necessary to permit the Authority to determine whether the firm is in fact an MBE/WBE and technically competent to perform portions of the Work.

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| <p>1. Queens Air Services Development Office
JFK International Airport
Building #141
Federal Circle, First Floor
Jamaica, NY 11430

(718) 244-6852
Fax (718) 244-7371
www.asdoonline.com</p> | <p>2. Chinatown Manpower Project, Inc.
70 Mulberry Street
New York, NY 10031

(212) 571-1690
www.cmpny.org</p> |
| <p>3. Association of Minority Enterprises of NY, Inc.
135-20 Liberty Avenue
Richmond Hill, NY 11419

(718) 291-1641
Fax (718) 291-1641
www.ameny.org</p> | <p>4. Statewide Hispanic Chamber of Commerce of New Jersey
150 Warren Street, Suite 110
Jersey City, NJ 07302

(201) 451-9512
Fax (201) 451-9547
www.shccnj.org</p> |

5. Greater Newark Business Development Consortium
744 Broad Street, 26th Floor
Newark, NJ 07102
(973) 242-5563
www.gnbdc.org
6. Jamaica Business Resource Center
90-33 160th Street
Jamaica, NY 11432
(718) 206-2255
Fax (718) 206-3693
www.jbrc.org
7. Council for Airport Opportunity
Newark Liberty International Airport
Building 80
Newark, NJ 07014
(973) 961-4382
www.caonj.com
8. National Hispanic Business Group
1230 Avenue of the Americas,
7th Floor
New York, NY 10020
(212) 265-2664
www.nhbg.org
9. Greater Jamaica Development Corp. 90-04 161st Street
Jamaica, NY 11432
(718) 291-0282
Fax (718) 291-7918
www.gjdc.org
10. NYS Assn. Of Minority Contractors
Brooklyn Navy Yard
Building 280, 4th Floor, Suite 414
Brooklyn, NY 11205
(212) 246-8380
Fax (718) 246-8376
www.nysamc.org

11. Professional Women in Construction 315 E. 56th Street, Suite 202
New York, NY 10022
(212) 486-7745
Fax (212) 486-0228
www.pwcusa.org
12. NY/NJ Minority Purchasing Council
330 Seventh Avenue, 8th Floor
New York, NY 10001
(212) 502-5663
www.nynjmsdc.org
13. National Minority Business Council
120 Broadway, 19th Floor
New York, NY 10271
(212) 693-5050
www.nmbc.org
14. Queens Overall Economic Development Office
120-55 Queens Boulevard, Suite 309 Kew Gardens, NY 11424
(718) 263-0546
Fax (718) 263-0594
www.queensny.org
15. York College Small Business Development Center
94-50 159th Street
York College,
Room S 107
Jamaica, NY 11451
(718) 262-2880
Fax (718) 262-2881
www.nyssbdc.org
16. Small Business Development Center - Rutgers University, University Heights
43 Bleeker Street
Newark, NJ 07102
(973) 353-1927
Fax (973) 353-1110
www.msbdc.newark.rutgers.edu

17. New Jersey Association of Women
Business Owners (NJAWBO)
186 Princeton Hightstown Road
West Windsor, NJ 08550
(609) 799-5101
www.njawbo.org
18. New Jersey Air Services Development Office
Newark Liberty International Airport Building #80 - Second Floor
Newark, NJ 07114
(973) 961-4278
Fax (973) 961-4282
www.asdonline.com
19. Caribbean-American Chamber of Commerce
Brooklyn Navy Yard
63 Flushing Avenue
Brooklyn, NY 11205
(718) 834-4544
Fax (718) 834-9774
www.caribbeantradecenter.com
20. Northeast Region – Small Business Resource Transportation Center
29-10 Thomson Avenue
Long Island City, NY 11101
(718) 482-5941
www.osdbu.dot.gov/regional/northeast.cfm
21. Asian Women in Business
42 Broadway, Suite 1748
New York, NY 10004
(212) 868-1368
Fax (212) 868-1373
www.awib.org
22. Asian American Business Development Center
80 Wall Street, Suite 418
New York, NY 10005
(212) 966-0100
Fax (212) 966-2786
www.aabdc.com

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| <p>23. New York State Federation of Hispanic Chambers of Commerce</p> <p>2710 Broadway</p> <p>New York, NY 10025</p> <p>(212) 222-8300</p> <p>Fax (212) 222-8412</p> <p>www.nysfhcc.com</p> | <p>24. Orange County Chamber of Commerce</p> <p>30 Scott Corners Drive</p> <p>Montgomery, NY 12549</p> <p>(845) 457-9700 Ext. 1101</p> <p>www.orangeny.com</p> |
| <p>25. Regional Alliance For Small Contractors</p> <p>625 Eighth Avenue, 2nd Floor,</p> <p>North Wing</p> <p>New York, NY 10018</p> <p>(212) 268-2991</p> <p>www.regional-alliance.org</p> | <p>26. Women Builders Council</p> <p>500 Hampton Avenue</p> <p>Brooklyn, NY 11235</p> <p>(212) 367-2130</p> <p>www.wbcnyc.org</p> |

All such requests shall be in writing addressed to the Chief Engineer. If any such firm is determined to be eligible it shall only be by a writing over the name of the Chief Engineer. In the event that such firm is found not to be eligible, the Chief Engineer will only consider as a substitute for such firm, a firm listed in the Authority's MBE/WBE Directory available on-line.

The Contractor shall submit the names of proposed MBEs/WBEs for work on this Contract if their names do not appear in the Authority's MBE/WBE Directory available on-line in accordance with the requirements of this clause and all other requirements of this Contract. MBEs/WBEs proposed as lessors of equipment or materialmen shall be deemed "subcontractors" for the purpose of this numbered clause and the clause hereof entitled "Assignments and Subcontracts" but shall not be deemed subcontractors for any other purpose.

The Contractor shall ensure that all approved MBE/WBE subcontractors maintain a regular on site presence at the construction site for the portions of the Work they are subcontracted to perform and that they exercise financial and operation management and control of such portions of the Work.

Nothing herein shall be deemed to supersede or to otherwise modify the clause of the Form of Contract entitled "Assignments and Subcontracts".

Confidential information

A. Confidential information shall mean all information disclosed to the Contractor or the personnel provided by the Contractor hereunder which relates to the Authority's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Contractor's Services under this Agreement.

B. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

C. The Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material,

equipment or other matter related to this Agreement or coming to the Contractor's attention in connection with this Agreement.

conflict of interest

During the term of this agreement, the Contractor shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such an agreement if the Contractor has a substantial financial interest in the Contractor or potential Contractor of the Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said Contractor or potential Contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a Contractor or potential Contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any agreement with such a Contractor or the review or resolution of a claim in connection with such an agreement is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director shall determine that the performance by the Contractor of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said services is determined by the Director to be no longer appropriate because of such preclusion, then the Director shall have full authority on behalf of both parties to order that such portion of the Contractor's services not be performed by the Contractor, reserving the right, however, to have the services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Contractor's part. The Contractor acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements which result, directly or indirectly, from the services provided by the Contractor hereunder.

Any entity performing services for the Authority is presumed to have a potential conflict of interest if the same entity or an affiliate also provides services to other World Trade Center stakeholders/owners (e.g., LMDC, NYSDOT, WTC Net Lessees) or their affiliates responsible for building portions of the World Trade Center site. However, if Contractor desires to perform services for such a third party and Contractor believes that Contractor can implement a mitigation plan that would address the perceived conflict of interest, Contractor, before agreeing to provide services to such a third party, shall give written notice to the Authority and shall submit to the Authority such plan for evaluation. The Authority will evaluate the submitted mitigation plan and notify Contractor of whether, in the Authority's sole discretion, such plan is acceptable. If the Authority determines that a potential conflict of interest exists that, in the Authority's sole opinion would make Contractor's provision of services to such a third party inappropriate, Contractor hereby agrees not to agree to provide services to such a third party. This Section is a material term of and is of the essence of the Agreement.

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CHAPTER II

COMPENSATION AND PAYMENTS

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CONTRACTOR'S COMPENSATION FOR NET COST WORK

The Contractor's entire compensation under the Contract for Net Cost Work shall be sum of the following amounts:

- A. **An amount equal to the Net Cost of the Work, such amount to be computed by the Engineer in accordance with the clause hereof entitled "Net Cost".**

An amount equal to _____ percent (__%)* of the Net Cost of the Work Order. (Such amount hereinafter called the "Contractor's Fee for Net Cost Work")

The following amounts:

Amounts deemed reasonable by the Engineer for the preparation of working drawings and catalog cuts pursuant to the Section of Division 1 of the Specifications entitled "Shop Drawings, Catalog Cuts and Samples".

Amounts deemed reasonable by the Engineer for the design of temporary structures pursuant to the Section of Division 1 of the Specifications entitled "Temporary Structures".

An amount equal to the actual amount paid by the Contractor as the net increase in premiums (in excess of the premiums for insurance coverage normally carried by the Contractor) if any, to provide insurance in accordance with the clause hereof entitled "Insurance Procured by Contractor".

Amounts other than those specified in this clause that are specifically provided for elsewhere in this Contract setting forth actual defined additions to or deductions from the Contractor's compensation provided hereinabove.

The Contractor's Fee provided in B. above shall cover the cost of all expenses other than those compensated as Net Cost and in C. above, for Work performed by the Contractor personally or by its subcontractors.

* Insert the percentage that was included as "Contractor's Fee for Net Cost Work" in the Contractor's submission in response to the RFP for this Contract in numbers and in writing, to two decimal places (e.g., Eight and No Hundredths Percent – 8.00%). In case of discrepancy between percentages quoted in writing and those quoted in figures, the writing shall control.

NET COST

Net Cost shall be determined by the Engineer in accordance with the following provisions and shall include the following amounts as applicable:

In the case of labor performed by the Contractor personally, or by a subcontractor approved by the Authority as required by the clause herein entitled "Approvals of Subcontracts, Purchases, Rentals and Sales" which is necessary for performance of Work required hereunder, an amount equal to the actual cost in money of the labor required for the Work.

As used in this numbered clause "labor" means on site labor necessarily performed at the construction site by the superintendent, foremen, surveyors, laborers, mechanics, timekeepers, and other employees directly employed at the construction site³ by the Contractor or an approved subcontractor, and "cost of labor" means the wages actually paid and received by such employees engaged in operations under this Contract plus a proper proportion of (i) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligations upon the basis of such wages, (ii) vacation allowances which the employer actually pays to salaried employees (the employees to be included under this subsection ((ii)) being subjected to the approval of the Engineer), and (iii) taxes actually paid by the employer pursuant to law upon the basis of such wages.

No inclusion in Net Cost shall be made for any salaried employee whose salary and whose employment on the job has not been approved in advance by the Engineer in writing. No inclusion in Net Cost shall be made for any wage in excess of prevailing wage rates in the state in which the work is being performed without prior written approval of the Engineer. In addition to the foregoing, no inclusion in Net Cost shall be made for overtime (other than the straight time wages) unless approved in advance by the Engineer in writing; or for preparation of working drawings, catalog cuts or the design of temporary structures, if any.

³ In the case of labor performed partially at the construction site and partially away from such site, the Engineer shall determine which portion of such labor is classifiable as "labor" as that term is used in this numbered clause.

* Insert the percentage that was included as "Contractor's Fee for Lump Sum Work," in the Contractor's submission in response to the RFP for this Contract in numbers and in writing, to two decimal places (e.g., Eight and No Hundredths Percent – 8.00%). In case of discrepancy between percentages quoted in writing and those quoted in figures, the writing shall control.

In the case of permanent, temporary or consumable materials necessary for performance of Work required hereunder, an amount equal to the actual amounts paid by the Contractor or a subcontractor approved by the Authority as required by the clause herein entitled "Approvals of Subcontracts, Purchases, Rentals and Sales" for such material (less salvage value of temporary materials and any purchased tools and purchased equipment as provided in the immediately following sentence; such salvage value shall be as determined by the Engineer at the conclusion of the Work performed under a Work Order) plus the reasonable cost of inspection, testing, transportation, storage and handling of such materials all in strict conformity with purchase orders approved in writing by the Engineer. As used herein, materials shall include temporary materials (including temporary utility services), consumable items (including temporary sanitary facilities), tools (excluding non-powered hand tools) and equipment purchased if directed by the Engineer where the Engineer has determined that the Contractor will not be compensated for the use of such tools and equipment under subparagraph 5 below.

If the Contractor is the manufacturer or producer of materials necessary for the performance of the Work Order, the reasonable cost to the Contractor of the manufacture, production, inspection, testing, transportation, storage and handling of such materials, provided said materials are manufactured or produced after the written approval of the Engineer is obtained.

The net amounts actually paid by the Contractor or a subcontractor for items of expense approved in advance by the Engineer for field office expenses, including the actual cost in money of furnishing and maintaining any field office, trailer, utilities and sanitary facilities for trailers and engineering supplies.

For rental of equipment (excluding non-powered hand tools) or construction aids (such as scaffolds, ladders, stairs, ramps, runways, platforms, railing, chutes and other such facilities) whether owned or not owned by the Contractor or a subcontractor an amount computed pursuant to the clause herein entitled "Computation of Rental for Construction Equipment", for equipment actually and necessarily used by the Contractor or a subcontractor, approved by the Authority as required by the clause hereof entitled "Approvals of Subcontracts, Purchases, Rentals and Sales" for the performance of the Work required hereunder.

An amount equal to the actual cost in money, as approved by the Engineer in writing, expended by the Contractor or a subcontractor approved by the Authority as required by the clause herein entitled "Approvals of Subcontracts, Purchases, Rentals and Sales", for procuring bonds or permits approved by the Engineer as necessary for the performance of the Work required hereunder.

The net amount actually paid by the Contractor for items of expense approved in advance by the Engineer for maintenance of traffic and work area protection as directed by the Engineer.

Exclusions

In computing the Net Cost of the Work, no amounts shall be included other than those expressly set forth above, it being agreed that the amounts specified in B., C. and D. of the Form of Contract clause entitled "Contractor's Compensation" cover the cost of all other expenses whatsoever even though greater than anticipated by either party, including, but not limited to, the Contractor's or any subcontractor's home office expenses, plant, overhead, interest, profit; any insurance procured to supplement or in excess of insurance procured by the Authority; and all other items of cost and expense whether similar to or different from those herein named.

Moreover, in determining the Net Cost of the Work there shall not be included any amount attributable to furnishing, delivering and maintaining non-powered hand tools, nor any amount not representing actual costs to the Contractor, and in particular, any discount, refund or credit received or receivable shall be applied to reduce the Net Cost of the Work, nor shall any amount be paid more than once even though fitting under more than one item provided for herein.

General

No expenditure shall be included more than once in the Net Cost even though fitting under more than one item provided for above.

The Contractor shall exercise his best efforts to avoid unnecessary expenditures and to keep expenditures to the minimum consistent with satisfactory performance of the Contract. Expenditures shall be included in the Net Cost only to the extent that they represent reasonable amounts for items described herein, as determined by the Engineer.

No expenditure shall be included in the Net Cost on account of any subcontract agreement or other type of agreement unless the Contractor has complied with the provisions relating to such agreement set forth in the clause herein entitled "Approvals of Subcontracts, Purchases, Rentals and Sales". No payment of any type in connection with any such agreement shall be included in the Net Cost in addition to the original price here under unless such additional payment has been approved by the Engineer.

When requested by the Engineer, before commencing the performance of any Work the Contractor shall furnish to the Engineer a memorandum showing the rates to be used in computing amounts to be included under subparagraph A.1.) above, and if any such rates shall change at any time or if Work is performed involving different rates for such amounts, the Contractor shall immediately furnish to the Engineer a memorandum showing such changes or different rates.

The Contractor shall, at the end of each day on which Work is performed, furnish to the Engineer daily time slips showing the name or number of each employee whose salary or wages is to be included under subparagraph A.1.) above, the number of hours which he is employed on the Work and the character of his duties. Moreover, if the compensation to be paid by the Authority for any Work performed by a subcontractor is in whole or in part of the basis of cost of labor, equipment or other items of expense, the Contractor shall also, at the end of each day on which any such work is performed, furnish to the Engineer daily time slips and memoranda of the above types showing in similar detail the items of expense incurred for such Work. All the foregoing time slips and memoranda are for the purpose of enabling the Engineer to keep an accurate record of all items of expense incurred, to verify the amount of such expenses at the time they are incurred, and to determine the amount of the Net Cost, as above provided, and the furnishing thereof as above required shall be a condition precedent to payment. Accordingly the failure of the Contractor to furnish such time slips and memoranda as above required with regard to any items of expense allegedly incurred shall be deemed to be a conclusive and binding determination on his part that no such expenses were in fact incurred and shall be deemed to be a waiver by the Contractor of all rights to compensation for such expenses.

The Contractor shall furnish copies of payrolls within one week after employees have been paid upon the basis of such payrolls.

The Engineer, acting personally shall have authority to agree in writing with the Contractor on behalf of the Authority on methods of computing, liquidating or determining any portion of the Net Cost in lieu of the methods above provided in this numbered clause. Notwithstanding the above, however, no guarantee is made that the Engineer, acting personally, will enter into any such agreement. In determining the Contractor's compensation, the amounts specified in B. and C. of the Form of Contract clause entitled "Contractor's Compensation" shall be added to any such agreed upon amounts for the Net Cost of the Work.

APPROVALS OF SUBCONTRACTS, PURCHASES, RENTAL AND SALES

As a condition precedent to the payment by the Authority to the Contractor of any amounts to be included pursuant to the clause herein entitled "Net Cost", the Contractor shall:

As stipulated in the Form of Contract clause entitled "Assignments and Subcontracts", obtain the prior written approval of the Authority for each subcontract the Contractor desires to enter into, including the subcontractor and terms of the subcontract.

Obtain the prior written approval of the Engineer, unless otherwise ordered by the Engineer, in which case the Contractor shall immediately obtain subsequent written approval, for any purchase or rental of materials, tools and equipment totaling more than One Thousand Dollars (\$1,000.00). Unless otherwise authorized in writing by the Engineer, the Contractor shall solicit at least two (2) telephone bids with respect to any such purchase or rental totaling more than One Thousand Dollars (1,000.00) but less than Five Thousand Dollars (\$5,000.00) and shall solicit at least three (3) written bids with respect to any such purchase or rental totaling more than Five Thousand Dollars (\$5,000.00).

With respect to any purchase or rental of materials, tools, equipment or construction aids containing any one item costing more than One Thousand Dollars (\$1,000.00), submit its proposed purchase order or rental agreement to the Engineer for approval. Such purchase order or rental agreement shall be accompanied by a memorandum stating the bids received and by copies of the appropriate bid or bids, in writing.

Obtain prior written approval from the Engineer for any sales of used materials tools or equipment. Unless otherwise authorized in writing by the Engineer, the Contractor shall solicit at least two (2) telephone bids with respect to any such sales with an estimated value of more than One Thousand Dollars (\$1,000.00) but less than Five Thousand Dollars (\$5,000.00) and shall solicit at least three (3) written bids with respect to any such sales with an estimated value of more than Five Thousand Dollars (\$5,000.00).

With respect to any sales of used materials, tools, equipment or construction aids containing any one item with an estimated value of more than One Thousand Dollars (\$1,000.00), submit proposed bill of sale to the Engineer for approval. Such bill of sale shall be accompanied by a memorandum stating the bids received and by copies of the appropriate bid or bids, if in writing.

Check in all materials, tools, construction aids and equipment and have responsible representatives who have been previously designated and identified in writing to the Engineer submit all such original, signed delivery tickets along with the vendor's invoice. With respect to sales for salvage, the responsible representatives shall check out all used materials and shall forward signed delivery tickets to the Engineer after the salvage items are properly delivered.

In addition to the above requirements, with respect to the rental of materials, tools, equipment or construction aids owned by the Contractor, submit in writing for approval by the Engineer a list of the equipment proposed to be used, including the estimated length of use.

Notwithstanding anything to the contrary contained in this numbered clause, the Authority shall not be liable for any amount attributable to the purchase of non-powered hand tools.

COMPUTATION OF RENTAL FOR CONSTRUCTION EQUIPMENT

The rental for equipment, whether owned by the Contractor or subcontractors or rented from others and notwithstanding the actual price of any rental or actual costs associated with such equipment, shall be computed by the Engineer on the basis of the following:

Hourly rental for those items of equipment listed in the "Rental Rate Blue Book" published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95110, (hereinafter called "the Blue Book"), shall be 100% of the applicable rates as listed in said book, reduced to an hourly basis (see formula below), except that such applicable rates shall be reduced by 50% for all hours of rental payable hereunder in excess of 8 hours each day. The edition of this publication to be used shall be the one in effect on the date of the actual rental of the equipment. The "Estimated Operating Cost per Hour" as set forth for such item of equipment in the Blue Book shall be added to the hourly rental for each hour that such equipment is actually engaged in performing Work. No amount for operating cost will be allowed during periods when such equipment is not actually engaged in performing Work (i.e., standby rental time). None of the provisions of the Blue Book shall be deemed referred to or included in this Contract except as specifically set forth in this Section.

If no listing of rental rate and/or hourly operating cost for the item of tools, equipment or construction aid is in the Blue Book, the Engineer shall determine the reasonable rate of rental and/or hourly operating cost of the particular item of tool, equipment or construction aid by such other means as he finds appropriate.

When utilizing the rental rates appearing in the Blue Book, the Engineer shall determine the applicable rate and the hourly rental determined therefrom by applying the following criteria:

The rate to be applied for an item of tool, equipment or construction aid used on a particular Work Order shall be the monthly rates from the foregoing publication.

The pro rata portion which one hour bears to the applicable rate shall be determined in accordance with the following formula:

Hourly rate based on monthly rental	1/176 of monthly rental from Blue Book
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The rental rate shall be multiplied by the applicable regional adjustment factor shown for such item of tool, equipment or construction aid in the Blue Book. The adjustment factor shall not apply to the hourly operating cost.

If the Engineer should determine that the nature, number of pieces or size of the tool, equipment or construction aid used by the Contractor in connection with the Work is more pieces, or larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Engineer to be suitable for the Work, the reasonable rental will not be based upon the tool, equipment or construction aid used by the Contractor but will be based on the smallest quantity or smallest or least elaborate tool, equipment or construction aid determined by the Engineer to have been suitable for the performance of the Work.

There will be added to the rental as computed above (a) the reasonable cost of transporting such tool, equipment or construction aid to and from the construction site, including applicable tolls, (b) the taxes on the rental actually paid by the Contractor or subcontractor and (c) notwithstanding the number of hours during which such of tool, equipment or construction aid is utilized, the minimum rental therefor will be for a period of eight hours.

Notwithstanding anything to the contrary contained in this numbered clause, the Authority shall not be liable for any amount attributable to the rental of non powered hand tools.

EQUIPMENT RENTAL RATES

FOR PRICES NOT SHOWN IN BLUE BOOK

APPROVED BY THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

	DESCRIPTION	MONTHLY	WEEKLY	DAILY
1.	NEGATIVE AIR MACHINE (6K)	866.70 ⁽²⁾	241.82 ⁽²⁾	60.67 ⁽²⁾
2.	NEGATIVE AIR MACHINE (2K)	240.75 ⁽²⁾	74.90 ⁽²⁾	20.60 ⁽²⁾

3.	HEPA VACUUM - SMALL (6 GAL)	107.00 ⁽²⁾	37.45 ⁽²⁾	12.84 ⁽²⁾
4.	HEPA VACUUM - MED. (12/15 GAL)	133.75 ⁽²⁾	42..80 ⁽²⁾	13.91 ⁽²⁾
5.	HEPA VACUUM - LG. (30/55 GAL)	144.45 ⁽²⁾	48.15 ⁽²⁾	16.05 ⁽²⁾
6.	RESPIRATOR – PAPR	64.20 ⁽²⁾	26.75 ⁽²⁾	10.70 ⁽²⁾
7.	AIR PUMP - PERSONAL (2 LPM)	74.90	26.75	9.48
8.	FOGGER	64.20	17.98	4.50
9.	DECON TRAILER	1337.50	449.40	149.80
10.	AIRLESS SPRAYER	642.00	257.68	74.90
11.	WASTE CONTAINER (1 CY)	74.90	25.68	8.56
12.	WASTE CONTAINER (48 CF)	53.50	14.98	3.75
13.	WOODEN LADDER	37.45	10.49	2.63
14.	REMINGTON NAIL GUN	123.05	34.46	8.62
15.	TYPE 'C' AIR SYSTEM (COMPLETE 8 MAN)	1551.50	518.95	176.55

NOTES:

- (1) HALF-FACE RESPIRATORS WILL BE COMPENSATED AS "MATERIALS" (MAXIMUM ALLOWANCE: ONE (1) MASK PER EMPLOYEE PER 4 TO 10 SITE DAYS OF WORK)
- (2) RATES INCLUDE FILTERS
- (3) FILTERS WILL BE COMPENSATED AS "MATERIALS"

MONTHLY ADVANCES

On or about the first and fifteenth day of each month, the Engineer shall (upon receipt from the Contractor of such information as he may require, including a certification in writing, in such form as may be required pursuant to the clause hereunder entitled "Prevailing Rate of Wage", that he has paid and caused his subcontractors to pay at least the prevailing rate of wage and supplements required by such clause) estimate and certify to the Authority the approximate amount of Work performed and compensation earned by the Contractor up to that time.

As an aid to the Contractor and to facilitate his performance, the Authority shall within fifteen days after the receipt of each such monthly certificate, advance to the Contractor by check the sums so certified, minus, however, either five percent (5%) of the applicable Net Cost earned and certified by the Engineer up to that time or One Hundred Thousand Dollars (\$100,000.00), whichever is less, and minus all prior advances and payments to the Contractor or for his account.

Further, after one year after the acceptance of the Contractor's Bid and upon completion of all Work under Work Orders issued prior to one year after the acceptance of the Contractor's Bid, upon receipt of such information from the Contractor as the Engineer may require and upon verification of amounts comprising the Contractor's Compensation, the Engineer will advance to the Contractor by check the remainder of the sums earned by the Contractor under all Work Orders issued prior to one after the acceptance of the Contractor's Bid.

Within seven days of receipt of any sum attributable to Work performed by a subcontractor or materialman or within such later period as is provided in the subcontract or purchase agreement, the Contractor shall advance to the subcontractor or materialman said sum, less such amount, if any, as the Contractor is authorized to retain under the subcontract or purchase agreement.

Notwithstanding the above, the Authority shall have the right, at its sole discretion, to directly pay the subcontractors and material suppliers who perform Work for or furnish materials to the Contractor in connection with the Work of this Contract.

Prior to certifying any amount for payment hereunder, the Engineer may require that the Contractor submit a certification accurately and fully setting forth the total amount due and payable to each subcontractor and supplier for Work performed or materials provided by such subcontractor or supplier in connection with the Work of this Contract. Any payment made by the Authority to a subcontractor or supplier pursuant to the provisions of this numbered clause shall be made in reliance upon such certification and all such payments shall be considered as advances to the Contractor of the compensation payable hereunder. No such payment shall relieve the Contractor of any of its obligations hereunder.

If and when subcontract and material supply agreements are entered into by the Contractor for performance of Work required by the Contracts, the Contractor shall submit to the Engineer a listing of all subcontract and material supply agreements entered into by the Contractor for the performance of Work required by the Contract. Such listing shall include the names and addresses of each such subcontractor and supplier and the amounts payable under each such agreement. As and when any modifications are made to such agreements or any additional subcontracts of supply agreements are entered into, the Contractor shall inform the Engineer of such and shall indicate the amounts payable thereunder.

Nothing contained herein shall be deemed to create any additional rights in such subcontractors or suppliers or to alter the rights of the Authority as such are set forth in the clause hereof entitled "Withholding of Payments".

FINAL PAYMENT

After the rendition of the Certificate of Final Completion and upon receipt from the Contractor of such information as may be required, the Engineer shall certify in writing to the Authority and to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon (i) certify to the Authority in writing, in such form as may be required pursuant to the clause hereunder entitled "Prevailing Rate of Wage", that he has paid and caused his subcontractors to pay at least the prevailing rate of wage and supplements required by such clause and (ii) furnish to the Authority a detailed sworn statement of all claims, just and unjust, of subcontractors, materialmen and other third persons then outstanding and which he has reason to believe may thereafter be made on account of the Work.

Within thirty days after issuance of such certificate of total compensation earned (or within thirty days after receipt of the documents provided for in the immediately preceding paragraph, if required), the Authority shall pay to the Contractor by check the amount stated in said certificate, less all other payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments shall be subject to correction in this payment, which is throughout this Contract called the Final Payment.

The acceptance by the Contractor, or by anyone claiming by or through him, of Final Payment shall be and shall operate as a release to the Authority of all claims and of all liability to the Contractor for all things done or furnished in connection with the Contract and for every act and neglect of the Authority and others relating to or arising out of the Contract, including claims arising out of breach of contract and claims based on claims of third persons, excepting only his claims for reimbursement for certain sales taxes as hereinbefore provided. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations in connection with this Contract or the Performance and Payment Bond.

The Contractor's agreement as provided in the immediately preceding paragraph above shall be deemed to be based upon the consideration forming part of this Contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediately preceding paragraph above shall nevertheless be effective. Such release shall include all claims, whether or not in litigation and even though still under consideration by the Authority or the Engineer. Such release shall be effective notwithstanding any purported reservation of right by the Contractor to preserve such claim. The acceptance of any check designated as "Final Payment" or bearing any similar designation shall be conclusively presumed to demonstrate the intent of the Contractor that such payment was

intended to be accepted as final, with the consequences provided in this numbered clause, notwithstanding any purported reservation of rights.

The Contractor agrees that he shall not be entitled to, and hereby waives any right he might otherwise have to, and shall not seek any judgment whether under this Contract or otherwise for any such Final Payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this numbered clause or have the effect in any way of entitling the Contractor to accept such Final Payment or an amount equivalent thereto or based thereon or any part thereof other than in the same fashion as a voluntary acceptance of a Final Payment subject to all the terms of this Contract including this numbered clause, unless and until the Contractor should obtain a judgment on any claim arising out of or in connection with this Contract (including a claim based on breach of contract) for an amount not included in said Final Payment. In any case in which interest is allowable on the amount of the Final Payment, such interest shall be at the rate of 6% per annum for the period, if any, in which such interest is due.

WITHHOLDING OF PAYMENTS

If (1) the Contractor fails to perform any of his obligations under this Contract or any other agreement between the Authority and the Contractor (including his obligation to the Authority to pay any claim lawfully made against him by any materialman, subcontractor or workman or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Authority and the Contractor is made against the Authority or (3) any subcontractor under this Contract or any other agreement between the Authority and the Contractor fails to pay any claims lawfully made against him by any materialman, subcontractor, workman or other third person which arises out of or in connection with this Contract or any other agreement between the Authority and the Contractor or if in the opinion of the Chief Engineer any of the aforesaid contingencies is likely to arise, then the Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payment has already been certified as due) such sums as the Chief Engineer may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Chief Engineer may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Authority shall create any obligation of any kind to such materialmen, subcontractors, workmen or other third persons.

Until actual payment to the Contractor, his right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of the Authority under this numbered clause.

In the event that wages and/or supplements have been paid in an amount less than as required by this Contract, the Authority shall also have the right to withhold from the Contractor out of any payment, final or otherwise, on this, or any other open contract that the Contractor has with the Authority, so much as may be necessary to pay to laborers, mechanics, architects, draftsmen, engineers and technical workers, and others employed on the Work, the difference between the sums such persons should have received as wages and/or supplements and the amounts they actually received, and to pay such sums over to such persons. All such payments shall be deemed to be payments for the Contractor's account. In addition, the Contractor shall be required to pay to the Authority an amount equal to the Authority's cost of any investigation conducted by or on behalf of the Authority, that discovers a failure to pay wages and/or supplements as required by this Contract by the Contractor or its subcontractors, the cost of such investigation to be determined by the Chief Engineer personally. If the Contractor fails or refuses to pay for the cost of any such investigation after demand by the Authority, the Authority may deduct from any amount payable to the Contractor by the Authority, under the Contract or under any other open contract between the Contractor and the Authority, an amount equal to the cost of such investigation.

If, however, the payment of any amount due to the Contractor shall be improperly delayed by the fault of the Authority, the Authority shall pay the Contractor interest thereon at the rate of six percent (6%) per annum for the period of delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

CHAPTER III

PROVISIONS RELATING TO TIME

TIME FOR COMPLETION AND DAMAGES FOR DELAY

The Contractor shall complete the performance of all Work required by each Work Order within the time(s) specified by the Engineer in such Work Order.

The Contractor shall not commence the performance of the first Work Order until the later of the following dates:

If a Performance and Payment Bond is required, the date of receipt by him of notice from the Authority that the Performance and Payment Bond furnished by him is satisfactory;

The date of receipt by him of notice from the Authority that the insurance procured by him in accordance with the clause hereof entitled "Insurance Procured by Contractor" is satisfactory, as evidenced by the certificate(s) furnished in accordance with said clause.

The time for completion shall not be extended on account of the time required to furnish the documents referred to in subparagraphs A. and B. above, but the Authority shall give notice to the Contractor within ten days after receipt of the Performance and Payment Bond or certificate(s) of insurance as to whether or not such bond or insurance is satisfactory.

The Contractor's obligation to start the Work at the construction site within the time or times provided for in this Contract is of the essence for this Contract. The Contractor guarantees that he can and will commence the performance of the Work and progress the Work within the time hereinbefore stipulated or within the time as extended in accordance with the clause hereof entitled "Extensions of Time". Inasmuch as the damage and loss to the Authority which will result from delay in commencing the performance of the Work within the time herein stipulated will include items of loss whose amount will be incapable or very difficult of accurate estimation, the damages to the Authority for each calendar day by which the Contractor does not commence performance of the Work within the time or times above stipulated or within such time or times as extended in accordance with the clause hereof entitled "Extensions of Time", shall be liquidated in the sum of Five Hundred Dollars (\$500) per calendar day.

The Contractor shall notify the Engineer of the time he plans to commence Work at the construction site at least 2 days prior to such time.

TERM OF CONTRACT

The term of the Contract shall commence on the date of the Authority's acceptance of the Contractor's Bid and shall terminate on the date five (5) years after the date of the Authority's acceptance of the Contractor's Bid with the option to extend for an additional two (2) one-year periods. However, if a Work Order is issued prior to the date 1 year after the date of the Authority's acceptance of the Contractor's Bid that requires Work to be performed after the aforementioned 1 year period, the Contractor shall perform such Work and the Contract shall continue in full force and effect until the completion of such Work Order.

This Contract may be terminated by the Authority at any time during the term of this Contract. The Authority shall have the right to terminate this Contract or any part thereof, without cause, at any time, upon 30 days written notice to the Contractor. The right of termination described above shall be in addition to any rights and remedies that the Authority would have at law or in equity resulting from the Contractor's breach of this Contract.

EXTENSIONS OF TIME

The time above provided for completion of any part of the Contract shall be extended (subject, however, to the provisions of this numbered clause) only if in the opinion of the Engineer the Contractor is necessarily delayed in completing such part by such time solely and directly by a cause which meets all the following conditions:

Such cause is beyond the Contractor's control and arises without his fault;

Such cause comes into existence after the opening of Bids on this Contract and neither was nor could have been anticipated by investigation before such opening.

CANCELLATION FOR DELAY

If the performance of the Contract or any portion of it shall, in the opinion of the Chief Engineer, be materially delayed, whether or not through the fault of the Contractor, by any cause which affects the Contractor's ability to perform the Contract without affecting to the same degree the Authority's own ability to perform it, either directly or through others, the Authority shall have the right at any time during the existence of such delay to cancel this Contract as to any portion not yet performed, without prejudice to the rights, liabilities and obligations of the parties under this Contract arising out of portions already performed, provided, however, that such right of cancellation shall not exist if the delay be due to any wrongful act or omission of the Authority. In the event of such cancellation, no allowance shall be made for anticipated profits.

CHAPTER IV

CONDUCT OF CONTRACT

AUTHORITY OF DIRECTOR

If at any time it shall be, from the viewpoint of the Authority, impracticable or undesirable in the judgment of the Director to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of the Authority, he shall have authority to suspend performance of any part or all of the Contract until such time as he may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of the Authority impracticable or undesirable in the judgment of the Director to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of the Authority, he shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed, but no allowance shall be made for anticipated profits.

AUTHORITY OF CHIEF ENGINEER

Inasmuch as the public interest requires that the project to which this Contract relates shall be performed in the manner which the Authority, acting through the Chief Engineer, deems best, the Chief Engineer shall have absolute authority to determine what is or is not necessary or proper for or incidental to the portion thereof specified in the clause hereof entitled "General Agreement" and the Contract Drawings and Specifications shall be deemed merely his present determination on this point. In the exercise of this authority, he shall have power to alter the Contract Drawings and Specifications; to require the performance of Work not required by them in their present form, even though of a totally different character from that now required; and to vary, increase and diminish the character, quantity and quality of, or to countermand, any Work now or hereafter required. Such variation, increase, diminution or countermanding need not be based on necessity but may be based on convenience.

To resolve all disputes and to prevent litigation the parties to this Contract authorize the Chief Engineer to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Bid and claims of a type which are barred by the provisions of this Contract) and his decision shall be conclusive, final and binding on the parties. His decision may be based on such assistance as he may find desirable. The effect of his decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not

he participated therein himself, or by any prior decision of the Engineer or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by the Contractor to the Chief Engineer for his decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against the Authority relating to any such question the Contractor must allege in his complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the Chief Engineer.

This numbered clause shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice of law provisions.

AUTHORITY AND DUTIES OF ENGINEER

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Engineer and shall perform the Contract to the satisfaction of the Engineer at such times and places, by such methods and in such manner and sequence as he may require, and the Contract shall at all stages be subject to his inspection. The Engineer shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret Contract Drawings and Specifications. The Contractor shall employ no equipment, materials, methods or men to which the Engineer objects, and shall remove no materials, equipment or other facilities from the construction site without permission. Upon request, the Engineer shall confirm in writing any oral order, direction, requirements or determination.

The Contractor is requested to orally advise the Engineer of questions as they arise. Although such advice will not substitute for the written notice and information for which requirements are set forth elsewhere herein, it is anticipated that it will facilitate prompt decisions on the part of the Engineer and others.

The enumeration herein or in the Specifications of particular instances in which the opinion, judgment, discretion or determination of the Engineer shall control or in which the Contract shall be performed to his satisfaction or subject to his inspection, shall not imply that only the matters of a nature similar to those enumerated shall be so governed and performed, but without exception the entire Contract shall be so governed and so performed.

NOTICE REQUIREMENTS

No claim against the Authority shall be made or asserted in any action or proceeding at law or in equity, and the Contractor shall not be entitled to allowance of such claim, unless the Contractor shall have complied with all requirements relating to the giving of written notice of the

information with respect to such claim as provided in this numbered clause. The failure of the Contractor to give such written notice and information as to any claim shall be conclusively deemed to be a waiver by the Contractor of such claim, such written notice and information being conditions precedent to such claim. As used herein "claim" shall include any claim arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Bid and claims of a type which are barred by the provisions of this Contract) for damages, payment or compensation of any nature or for extension of any time for performance of any part of this Contract.

The requirements as to the giving of written notice and information with respect to claims shall be as follows:

Any matter for which requirements are set forth elsewhere in this Contract, or on Work Order(s) issued by the Engineer, as to notice and information, such requirements shall apply.

In the case of all other types of claim, notice shall have been given to the Engineer, personally, as soon as practicable, and in any case, within 48 hours, after occurrence of the act, omission, or other circumstance upon which the claim is or will be based, stating as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as soon as practicable after it becomes or should become known to the Contractor, including daily records showing all costs which the Contractor may be incurring or all other circumstances which will affect any claim to be made, which records shall be submitted to the Engineer, personally.

The above requirements for notices and information are for the purpose of enabling the Authority to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expense or circumstances as they occur, and the requirements herein for such notice and information are essential to this Contract and are in addition to any notice required by statute with respect to suits against the Authority.

The above referred to notices and information are required whether or not the Authority is aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Authority has indicated it will consider a claim.

No act, omission, or statement of any kind shall be regarded as a waiver of any of the provisions of this numbered clause or may be relied upon as such waiver except only either a written statement signed by the Executive Director of the Authority or a resolution of the Commissioners

of the Authority expressly stating that a waiver is intended as to any particular provision of this numbered clause, and more particularly no discussion, negotiations, consideration, correspondence, or requests for information with respect to a claim by any Commissioner, officer, employee or agent of the Authority shall be construed as a waiver of any provision of this numbered clause or as authority or apparent authority to effect such a waiver.

Since merely oral notice or information may cause disputes as to the existence or substance thereof, and since notice, even if written, to other than the Authority representative above designated to receive it may not be sufficient to come to the attention of the representative of the Authority with the knowledge and responsibility of dealing with the situation only notice and information complying with the express provisions of this numbered clause shall be deemed to fulfill the Contractor's obligation under this Contract.

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EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

The Contractor shall send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of the Contractor's agreement under A. through H. of this numbered clause (hereinafter called "non-discrimination requirements"). If the Contractor was directed to do so by the Authority as part of the bid or negotiation of this Contract, the Contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, sex, color or national origin and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination requirements or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Contract, shall be in accordance with the purposes and provisions of these non-discrimination requirements. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.

The Contractor shall post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of A. and B. herein and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.

The Contractor shall state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin.

The Contractor shall comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, shall furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination requirements and such sections of the Executive Law, and shall permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination requirements and such sections of the Executive Law and Civil Rights Law.

This Contract may be forthwith canceled, terminated or suspended, in whole or in part, by the Authority upon the basis of a finding made by the State Commission for Human Rights that the Contractor has not complied with these non-discrimination requirements, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State, the Authority or other public authority or agency of the State, until he has satisfied the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination requirements. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination requirements and after a verified complaint has been filed with the Commission, notice thereof has been given to the Contractor by the Commission and an opportunity has been afforded him to be heard publicly before the State Commissioner of Human Rights or his designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

The Contractor shall include the provisions of A. through F. above in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor shall take such action in enforcing such provisions of such subcontract or purchase order as the Authority may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Authority, the Contractor shall promptly so notify the General Counsel to the Authority, requesting him to intervene and protect the interests of the Authority.

The provisions of this numbered clause which refer to the State Commission for Human Rights, the Attorney General and the Industrial Commissioner are inserted in this Contract for the benefit of such parties, as well as for the benefit of the Authority, and said Commission, Commissioner and the Attorney General shall have a direct right of action against the Contractor to effectuate the intent of this clause.

AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY

The Contractor shall comply with the provisions set forth hereinafter. These provisions are modeled on the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance in 1978.

The Contractor and each subcontractor must fully comply with the clause entitled 'Equal Employment Opportunity' and the requirements in this numbered clause. The Contractor commits himself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of this numbered clause by submitting a properly signed Bid.

The Contractor shall appoint a company executive to assume the responsibility for the implementation of the requirements, terms and conditions of this numbered clause.

The goals for minority and female participation, expressed in percentage terms, for the Contractor's workforce at the construction site under this Contract are as follows:

Minority, except laborers	30%
Minority, laborers	40%
Female, except laborers	6.9%
Female, laborers	6.9%

These goals are applicable to all construction Work performed at the construction site under the Contract.

The Contractor's compliance with this numbered clause shall be based on his implementation of the clause entitled 'Equal Employment Opportunity', and specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of the Contract and in each trade. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director, Office of Business Diversity and Civil Rights of the Port Authority of New York and New Jersey, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under this Contract. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated start and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

The Contractor shall submit a Workforce Projection Schedule, which shall be correlated to the progress schedule, within thirty days after acceptance of the Contractor's Bid, for the approval of the Engineer. The Contractor shall maintain and periodically update it at intervals as required by the Engineer. The Workforce Projection Schedule shall include the time period in which each trade shall be utilized, the average number of workers required per trade on a weekly basis, the peak period for each trade, and the number of workers required per trade for the peak period on a weekly basis.

As used in this numbered clause:

"Director" means Director, Office of Business Diversity and Civil Rights of the Authority;

"Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;

"Minority" includes:

Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, he shall physically include in each subcontract in excess of \$10,000 such provisions as are necessary for the Contractor to achieve the aggregate goals set forth above.

The Contractor shall implement the specific affirmative action standards provided in 6.) a. through p. hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in the total workforce at the construction site under the Contract including employees of the Contractor and the subcontractors. The Contractor is expected to make substantially uniform progress toward his goals in each craft during the period specified. These goals may be achieved through utilization of journeyworkers and apprentices. In the event they are not achieved through the utilization of journeyworkers, the maximum number of apprentices provided for in the applicable collective bargaining agreement may be utilized to achieve said goals.

Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations hereunder.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these provisions shall be based upon his effort to achieve maximum results from his actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or his unions have employment opportunities available, and maintain a record of the organizations' responses.

Develop maximum job opportunities for apprentices appropriate to the conditions of the Work and subject to the applicable collective bargaining agreement, in conjunction with training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 6.) a. above.

Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet his obligations.

Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting his EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

Review, at least annually, the company's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

Direct his recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth.

Tests and other selection requirements shall comply with 41 CFR Part 60-3.

Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (6.) a. through p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of his obligations under 6.) a. through p. hereof provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet his individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

Goals for minorities and for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved his goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is under-utilized).

The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

The Contractor shall carry out such sanctions and penalties for violation of this clause and of the clause entitled "Equal Employment Opportunity", including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by the Authority. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.

The Contractor, in fulfilling his obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in 6.) hereof so as to achieve maximum results from his efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Authority shall proceed accordingly.

The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports, including the Monthly Employment Utilization Report, relating to the provisions hereof as may be required and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

Nothing herein provided shall be construed as a limitation upon the application of any laws which establish standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

AFFIRMATIVE ACTION PROGRAMS

The Contractor assures that he will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that he will require that his covered suborganizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

PREVAILING RATE OF WAGE

The Contractor shall pay or provide (and shall cause all subcontractors to pay or provide) to his or their workmen, laborers and mechanics (who are employed by him or them to work on an hourly or daily basis at any trade or occupation at or about the construction site) at least the prevailing rate of wage and supplements for others engaged in the same trade or occupation at the time and in the locality in which the Work is being performed as determined by the Engineer and notwithstanding that such rate may be higher than the rate in effect on the date of opening of Bids.

For purposes of this Contract, the Engineer has determined that the prevailing rates of wage and supplements are those established by the Commissioner of Labor of the State of New York for the locality and for the period of time in which the Work is performed. The currently prevailing rates of wage and supplements are set forth in the Prevailing Rate Schedule annexed hereto and made a part hereof. These rates are subject to annual adjustment effective July 1st of each year and a Prevailing Rate Schedule reflecting all adjustments will be available for the Contractor's inspection on or about July 15th of each year on the 3rd Floor, 3 Gateway Center, Newark, New Jersey 07102 during regular business hours.

The provisions of this numbered clause are inserted in this Contract for the benefit of such workmen, laborers and mechanics as well as for the benefit of the Authority; and if the Contractor or any subcontractor shall pay or provide any such workman, laborer or mechanic less than the rates of wages and supplements above described, such workman, laborer or mechanic shall have a direct right of action against the Contractor or such subcontractor for the difference between the wages and supplements actually paid or provided and those to which he is entitled under this clause. If such workman, laborer or mechanic is employed by any subcontractor whose subcontract does not contain a provision substantially similar to the provisions of this clause (requiring the payment or provision of at least the above minimum, and providing for a cause of action in the event of the subcontractor's failure to pay or provide such wages and supplements) such workman, laborer or mechanic shall have a direct right of action against the Contractor. The Authority shall not be a necessary party to any action brought by any workman, laborer or mechanic to obtain a money judgment against the Contractor or any subcontractor pursuant to this numbered clause.

Nothing herein contained shall be construed to prevent the Contractor or any subcontractor from paying higher rates of wages or providing higher supplements than the minimum hereinbefore prescribed; and nothing herein contained shall be construed to constitute a representation or guarantee that the Contractor or any subcontractor can obtain workmen, laborers and mechanics for the minimum herein before prescribed. All wages actually paid that are in excess of the prevailing wages in the performance of Work shall be subject, on each occasion, to the initial and continuing approval of the Engineer in advance of the performance of such Work.

The Contractor shall post at the Work site, in a place that is prominent, accessible and visible to all employees of the Contractor and its subcontractors during the daily time period that the Contractor and/or subcontractor performs Work at the site, the appropriate prevailing wage and supplement schedules. The Contractor must inform all employees, including those of its subcontractors, that they may obtain a copy of the prevailing wage and supplement schedule from the Contractor.

The Contractor and every subcontractor shall make and maintain weekly payroll records during the course of the Work and for the period set forth in the clause hereof entitled "Authority Access to Records" for all employees employed in the Work. Such records shall contain the name, address and last four digits of the social security number of each such employee (Contractors and subcontractors must maintain the full social security number of each employee and shall provide them upon request to the Port Authority Inspector General), the employee's correct payroll classification, rate of pay and supplements, daily and weekly number of hours worked, deductions made and actual wages and supplements paid. The Contractor shall submit these weekly payroll records to the Authority (on forms furnished by the Authority) of all his payroll records and those of each of his subcontractors as the Authority may require with the Contractor's monthly Payment Application, together with an affidavit by the Contractor and by each subcontractor to the effect that such payroll records are correct and complete, the wage and supplement rates contained therein are not less than those required by the provisions of this Contract, and the classifications set forth for each employee conform with the work performed. Such copies and summaries and the original payroll records shall be available for inspection by the Authority (including its Inspector General), and the Contractor and its subcontractors shall permit such representatives to interview employees during working hours on the job site.

The Engineer may at any time request the Contractor to prepare a daily report on the Authority form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained from the Engineer. The *Contractor Daily Sign-In Sheet* shall be completed as follows:

At the beginning of each workday the Contractor shall:

fill in the top of the *Contractor Daily Sign-In Sheet*, including the location, date, contractor/subcontractor name and contract number;

ensure that each employee, including those of subcontractors, has printed and signed his or her name and indicated his or her work classifications, the last four digits of his or her social security number, and his or her starting time;

At the end of each workday, the Contractor shall:

ensure that each employee, including those of subcontractors, has signed out and indicated his or her ending time;

sign the Certification Statement at the bottom of the form to indicate that the information contained in the *Contractor Daily Sign-In Sheet* is true and accurate; and

submit the original completed form to the Engineer's representative.

In an area of his office at the Site of the Work which is accessible to his employees, the Contractor shall display such printed material as may be provided by the Engineer setting forth information for the employees of the Contractor and his subcontractors concerning the wage and supplemental benefit requirements set forth in this numbered clause. The Contractor shall also cause each of his subcontractors to display such material in a similarly accessible place in any office which the subcontractor maintains at the Site of the Work.

The Contractor's failure to comply with any provision of this numbered clause shall be deemed a substantial breach of this Contract.

TITLE TO MATERIALS

All materials to become part of the permanent construction shall be and become the property of the Authority upon delivery at the construction site or upon being especially adapted for use in or as a part of the permanent construction, whichever may first occur, subject however to the Contractor's assumption of risk under the clause hereof entitled "Risks Assumed by the Contractor", subparagraph A.

The Contractor shall promptly furnish to the Authority such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring to it title to such materials, free of encumbrances and shall mark or otherwise identify all such materials as the property of the Authority.

assignment of contract

Contractor agrees that the Port Authority, upon providing notice to the Contractor, may assign this Contract to one or more entity(ies). Upon its receipt of the notice, Contractor agrees that it

shall fully perform the terms of this Contract for said entity(ies), whom shall be solely liable, respectively, for all payments subsequently earned by Contractor pursuant to this Contract. In addition, Contractor shall require that any subcontract entered into by it in connection with this Contract shall contain a similar provision allowing for the assignment of that subcontract to said entity(ies). Upon such assignment, the Port Authority shall become a third-party beneficiary of this Contract.

ASSIGNMENTS AND SUBCONTRACTS

Any assignment or other transfer by the Contractor of this Contract or any part hereof or of any of his rights hereunder or of any monies due or to become due hereunder and any delegation of any of his duties hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that the Contractor may subcontract portions of the Work to such persons as the Engineer may, from time to time, expressly approve in writing. For each individual, partnership or corporation proposed by the Contractor as a subcontractor, the Contractor shall submit to the Authority a certification or, if a certification cannot be made, a statement by such person, partnership or corporation to the same effect as the certification or statement required from the Contractor pursuant to the clauses of the "Information For Bidders" entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, Etc; Disclosure of Other Required Information", "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee" and "Certification of Participation in a State-Registered Apprenticeship Program". The Certification of Participation in a State-Registered Apprenticeship Program shall only be applicable to each subcontractor whose total amount of subcontract under this Contract is greater than \$1 million. All further subcontracting by any subcontractor shall also be subject to such approval of the Engineer. Approval of a subcontractor may be conditioned on (among other things) the furnishing, without expense to the Authority, of a surety bond guaranteeing payment by the subcontractor of claims of materialmen, subcontractors, workmen and other third persons arising out of the subcontractor's performance of any part of the Work. Approval of a subcontractor may be rescinded for, among other things, failure of the Contractor to furnish the subcontractor's certificate of insurance, as required by the Form of Contract clause entitled "Insurance Procured by Contractor", within the time set forth in said clause.

No consent to any assignment or other transfer, and no approval of any subcontractor, shall under any circumstances operate to relieve the Contractor of any of his obligations; no subcontract, no approval of any subcontractor and no act or omission of the Authority or the Engineer shall create any rights in favor of such subcontractor and against the Authority; and as between the Authority and the Contractor, all assignees, subcontractors, and other transferees shall for all purposes be deemed to be agents of the Contractor. Moreover, all subcontracts and

all approvals of subcontractors shall be and, regardless of their form, shall be deemed to be conditioned upon performance by the subcontractor in accordance with this Contract; and if any subcontractor shall fail to perform the Contract to the satisfaction of the Engineer, the Engineer shall have the absolute right to rescind his approval forthwith and to require the performance of the Contract by the Contractor personally or through other approved subcontractors.

CLAIMS OF THIRD PERSONS

The Contractor undertakes to pay all claims lawfully made against him by subcontractors, materialmen and workmen, and all claims lawfully made against him by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

CERTIFICATES OF PARTIAL COMPLETION

If at any time prior to the rendition of the Certificate of Final Completion, any portion of the permanent construction has been satisfactorily completed, and if in the judgment of the Engineer such portion of the permanent construction is not necessary for the operations of the Contractor but will be immediately useful to and is needed by the Authority for other purposes, the Engineer may render to the Authority and to the Contractor a certificate in writing to that effect (herein called a Certificate of Partial Completion), and thereupon or at any time thereafter the Authority may take over and use the portion of the permanent construction described in such Certificate and exclude the Contractor therefrom.

The rendition of a Certificate of Partial Completion shall not be construed to constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates in the event that he has failed to complete the same in accordance with the terms of this Contract. Moreover, the acceptance of a Certificate of Partial Completion by the Authority shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

CERTIFICATE OF FINAL COMPLETION

After the satisfactory completion of all Work whatsoever required and the making of such tests and inspections as may be necessary or desirable, the Engineer shall render to the Authority and to the Contractor a certificate in writing (herein called the Certificate of Final Completion) certifying that in his opinion all Work under this Contract has been completed in accordance with the Contract Drawings and Specifications and the requirements of the Engineer, and certifying the date as of which it was so completed.

The rendition of the Certificate of Final Completion shall not be construed to constitute an extension of the Contractor's time for performance in the event that he has failed to complete the Work in accordance with the terms of this Contract. Moreover, the acceptance of the Certificate

of Final Completion by the Authority shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

During the term of this Contract, the Contractor shall not offer, give or agree to give anything of value either to an Authority employee, agent, job shopper, Contractor, construction manager or other person or firm representing the Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, Contractor, construction manager or other person or firm representing the Authority of duties involving transactions with the Contractor on behalf of the Authority, whether or not such duties are related to this Contract or any other Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Authority contract), etc., which might tend to obligate the Authority employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Authority contract.

Where used in this clause, the term "Authority" shall be deemed to include all subsidiaries of the Authority. Currently, those subsidiaries are the Port Authority Trans-Hudson Corporation (PATH), the Newark Legal and Communications Center and the New York and New Jersey Railroad Corporation.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

CHAPTER V

WARRANTIES MADE AND LIABILITY

ASSUMED BY THE CONTRACTOR

CONTRACTOR'S WARRANTIES

The Contractor represents and warrants:

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That he is financially solvent, that he is experienced in and competent to perform the type of services contemplated by this Contract, that the facts stated or shown in any papers submitted or referred to in connection with his Bid are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;

That he has carefully examined and analyzed the provisions and requirements of this Contract and inspected the construction site, that from his own investigations he has satisfied himself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to him for such examination, analysis, inspection and investigations was adequate;

That the Contract is feasible of performance in accordance with all its provisions and requirements and that he can and will perform it in strict accordance with such provisions and requirements;

That no Commissioner, officer, agent or employee of the Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder; and

That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, existence or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at the construction site; (3) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (4) the general or local conditions which may in any way affect this Contract or its performance; (5) the price of the Contract; or (6) any other matters, whether similar to or different from those referred to in (1) through (5) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, the Contractor accepts the conditions at the construction site as they may eventually be found to exist and warrants and represents that he can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of

any unforeseen conditions (physical or otherwise) shall be wholly at his own cost and expense, unless specifically provided for elsewhere in this Contract.

Nothing in the Work Orders issued by the Engineer, Contract Drawings, if any, or Specifications or any other part of the Contract is intended as or shall constitute a representation by the Authority as to the feasibility of performance of this Contract or any part thereof. Moreover, the Authority does not warrant or represent either by issuance of the Work Orders issued by the Engineer, Contract Drawings, if any, and Specifications or by any provision of this Contract as to time for performance or completion or otherwise that the Contract may be performed or completed by the times required herein or by any other times.

The Contractor further represents and warrants that he was given ample opportunity and time and by means of this paragraph was requested by the Authority to review thoroughly all documents forming this Contract prior to opening of Bids on this Contract in order that he might request inclusion in this Contract of any statement, representation, promise or provision which he desired or on which he wished to place reliance; that he did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that he expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to the Authority's consent to enter into this Contract and that without such provisions, the Authority would not have entered into this Contract.

RISKS ASSUMED BY THE CONTRACTOR

The Contractor assumes the following distinct and several risks, whether they arise from acts or omissions (whether negligent or not) of the Contractor, of the Authority, or of third persons, or from any other cause, and whether such risks are within or beyond the control of the Contractor, excepting only risks which arise solely from affirmative acts done by the Authority subsequent to the opening of Bids on this Contract with actual and wilful intent to cause the loss, damage and injuries described in subparagraphs A through C below:

The risk of loss or damage to the permanent construction prior to the rendition of the Certificate of Final Completion (other than loss or damage to the portions of the permanent construction with respect to which Certificates of Partial Completion have been issued), and the Contractor shall forthwith repair, replace and make good any such loss or damage to the permanent construction without cost to the Authority;

The risk of claims, fines or penalties, just or unjust, made by third persons or assessed by courts or governmental agencies or entities against the Contractor or the Authority on account of injuries (including wrongful death), loss, damage or liability of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Work (whether or not actually caused by or resulting from the performance of the Work) or out of or in connection with the Contractor's operations or presence at or in the vicinity of the construction site or Authority premises, including claims against the Contractor or the Authority for the payment of workers' compensation, whether such claims, fines or penalties are made or assessed and whether such injuries, damage, loss and liability are sustained at any time both before and after the rendition of the Certificate of Final Completion;

The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Authority for loss or damage to any property of subcontractors, materialmen, workmen and others performing the Work, occurring at any time prior to completion of removal of such property from the construction site or Authority premises or the vicinity thereof.

The Contractor shall indemnify the Authority against all claims described in subparagraphs B and C above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys, except where indemnity would be precluded by New York State General Obligations Law, Section 5-322.1 or by other applicable law. If so directed, the Contractor shall defend against any claim described in subparagraphs B and C above, in which event he shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits

against the Authority . Unless a claim is one which the Contractor is not required to indemnify the Authority against as described in the first sentence of this paragraph, such defense shall be at the Contractor's cost.

The provisions of this numbered clause shall also be for the benefit of the Commissioners, officers, agents and employees of the Authority, so that they shall have all the rights which they would have under this numbered clause if they were named at each place above at which the Authority is named, including a direct right of action against the Contractor to enforce the foregoing indemnity, except, however, that the Authority by action of its Board of Commissioners may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this numbered clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither the issuance of a Certificate of Completion nor the making of Final Payment shall release the Contractor from his obligations under this numbered clause. Moreover, neither the enumeration in this numbered clause nor the enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which he is responsible shall be deemed (a) to limit the effect of the provisions of this numbered clause or of any other clause of this Contract relating to such risks or claims, (b) to imply that he assumes or is responsible for risks or claims only of the type enumerated in this numbered clause or in any other clause of this Contract, or (c) to limit the risks which he would assume or the claims for which he would be responsible in the absence of such enumerations.

Inasmuch as the Authority has agreed to indemnify the City of New York against claims of the types described in subparagraph B above made against said city, the Contractor's obligation under subparagraph B above shall include claims by said city against the Authority for such indemnification, including those arising from acts or omissions (whether negligent or not) of said city.

NO THIRD PARTY RIGHTS

Nothing contained in this Contract is intended for the benefit of third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action".

INSURANCE PROCURED BY THE AUTHORITY

In order to reduce the cost of this Contract, the Authority will procure and will maintain in force and pay the premiums on the World Trade Center Tower 1 Owner Controlled Insurance Program (OCIP) as follows:

A. Workers' Compensation

A separate standard NYS Workers' Compensation policy will be issued to each Contractor performing work at the project work site. Coverage will include:

1. Workers' Compensation meeting the statutory limits of the State of New York, including Occupational Disease, and
2. Employers' Liability, subject to the laws of New York State;
3. U.S. Longshore and Harbor Workers' Act, Federal Employers' Liability Act, and Maritime Endorsement, as applicable.

NOTE: Workers' Compensation coverage is not provided for certain types of work performed (e.g., asbestos abatement or electrical work). However, it is the responsibility of the Contractor to comply with NYS Workers' Compensation law by providing their own coverage for their workers. Please contact the Construction Manager and P.A. Treasury / Risk Management.

B. Commercial General Liability Insurance

Commercial General Liability Insurance to each Contractor, as follows:

1. \$500,000,000 Combined Single Limit (CGL) each one occurrence and aggregate.
2. General Liability and Excess Liability policies include the following coverages and provisions:
 - Bodily Injury and Property Damage Liability
 - Completed Operations extended for three (3) years from the date of termination of the Insurance Policy or completion of the Contract, whichever comes first. "Completed Operations Liability", means liability for "Bodily Injury" and/or "Property Damage" arising out of the "Insured's" operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the "Bodily Injury" and /or "Property Damage" happens after such operations have been completed or abandoned and happens away from the premises owned by or rented to any "Insured" (other than those premises owned or operated by the named "Insured").
 - Personal Injury Liability
 - *Cross Liability in respect to Bodily Injury claims*
 - Incidental Malpractice Liability
 - Advertising Liability

C. Builder's Risk Insurance

Builder's Risk Insurance coverages are as follows:

1. \$1,000,000,000 of Hard Costs (subject to a \$50,000,000 annual aggregate for Flood and Earthquake damage and \$250,000,000 per occurrence as respects Windstorm).
2. Coverages include, but are not limited to:
 - All property to be used in or incidental to the project, including property in the Insured's custody, property in which the insured has an insurable interest, property for which the insured is liable.

And as more fully described in the Lexington Manuscript Completed Value Builders Risk policy form.

D. Contractors Pollution Liability

Contractors Pollution Liability coverage is as follows:

1. Limits - \$100,000,000 each combined with a \$100,000,000 policy aggregate. The deductible is \$10,000 that is the responsibility of the Contractor and subcontractors. The policy has limitations and exclusions.
2. Bodily injury, property damage, or environmental damage caused by pollution conditions resulting from covered operations (the project work) only, and must be unexpected and unintended from the standpoint of the Insured.
3. The bodily injury, property damage, or environmental damage must occur during the policy period.

E. Terrorism

1. Limits - \$500,000,000

Coverage – Based upon the Terrorism Risk Insurance Act of 2002 and the Terrorism Risk Insurance Extension Act of 2005.

Coverage includes acts considered “certified” and “non-certified” acts of terrorism.

Determination in any instance as to the appropriateness of the included coverage described in A.1, 2 and 3 above will be made based upon information to be provided by the Contractor relating to the mode of performance of work to be done under the Contract.

The policy described in A above will not provide coverage for any workers' compensation for the Contractor and/or subcontractors who perform any asbestos Work. In such cases, the Contractor or subcontractors shall procure and maintain, at their own expense, the workers' compensation insurance in accordance with the requirements of law in the state(s) where the work will take place, along with employer's liability insurance (in limits of not less than \$1million per occurrence)

Should the Contractor and/or subcontractors be required to procure the workers' compensation insurance, within ten days after the acceptance of its Proposal the Contractor shall deliver to the General Manager, Risk Management, The Port Authority of NY & NJ, Treasury Department, 225 Park Avenue South, 12th Floor, New York, N.Y. 10003 (Attn: The WTC Coordinator), an original certificate, stating the Contract number, from the insurer. A duplicate certificate evidencing the above insurance shall also be delivered to the Engineer.

The requirements for insurance procured by the Contractor or subcontractors shall not in any way be construed as a limitation on the nature or extent of the obligations of the Contractor or subcontractors.

The current policies described in A through E of this numbered clause are on file and available for examination by appointment in the office of the General Manager, Risk Management, The Port Authority of NY & NJ, Treasury Department, 225 Park Avenue South, 12th Floor, New York, N.Y. 10003. The policies under A and E above are subject to certain coverage exclusions. The Contractor and subcontractors shall comply with all obligations of the insured under or in connection with all of the policies described in A through E above.

The Authority shall have the right at any time and from time to time at its option to procure insurance substituting in whole or in part for any or all of the policies described in A through E above or to require that the Contractor and the subcontractors themselves obtain insurance substituting in whole or part for that above referred to, provided always, however, that the Contractor and the subcontractors shall be afforded coverage as stipulated by the Authority and the Authority shall either pay the premiums on such substitute insurance or reimburse the Contractor and the subcontractors for actual cost.

Neither the procurement of the above insurance or any substitute insurance nor the extent of the coverage or the limits of liability thereunder shall be construed to be a limitation on the nature or extent of the Contractor's obligations, or to relieve the Contractor of any such obligations, and the procurement of the above insurance is only for the purpose of reducing the cost of the Contract without constituting any representation by the Authority as to the adequacy of the insurance to protect the Contractor against the obligations imposed on the Contractor by law (except the applicable State Workers' Compensation Law) or by this or any other Contract.

Notwithstanding any provision of this clause, however, no subcontractor shall be or have the right to be covered under the policies of insurance above referred to until the subcontractor has been expressly approved in writing by the Engineer, as required under this Contract, and such approval may be withheld, among other reasons, until execution by the subcontractor of agreements affirming its obligations provided in this clause with respect to the above insurance.

The provisions of this numbered clause are not intended to create any rights for the Contractor other than rights, which may be available to the Contractor under said policies themselves, whatever such rights may be. Moreover, the Authority makes no representation or guaranty, either by the provisions of this numbered clause or otherwise, as to the effect of or the coverage under said policies, and no employee or agent of the Authority is authorized to make any such representation or guaranty, either by the provisions of this numbered clause or otherwise, as to the effect of or the coverage under said policies, and no employee or agent of the Authority is authorized to make any such representation or guaranty or to offer any interpretation of or information on said policies.

The Contractor warrants and represents that it has examined and is familiar with the above stated coverages and that in submitting its Proposal it has relied solely on its own interpretation thereof and not on any representations or statements, oral or written, of the Authority, its Commissioners, officers, agents, employees, consultants or contractors.

All negotiations and adjustments with any insurer concerning payment for any loss, the risk of which is borne by the Contractor under this Contract, shall be the responsibility of and shall be conducted by the Contractor unless the applicable policy provides otherwise. The Contractor shall, however, inform the Engineer of the progress of all such negotiations and notify the

Engineer sufficiently in advance of all meetings thereon so that the Engineer or designated representatives may attend said negotiations if they so desire.

The Authority shall be entitled to all returned premiums, dividends and credits which may become payable at any time for any reason whatsoever in connection with the aforementioned insurance. The Contractor hereby assigns to the Authority all such returned premiums, dividends and credits and the subcontractors shall be deemed to have assigned to the Authority all such returned premiums, dividends and credits by becoming subcontractors under this Contract. The Contractor shall execute and cause the subcontractors to execute any instrument necessary or convenient to evidence the Authority's right to such returned premiums, dividends and credits.

Notwithstanding any payment by the Authority of any insurance premiums, the Authority shall not be deemed the employer of any employees hired by the Contractor or any subcontractor covered by such insurance nor shall it be liable for any of the obligations of such employer.

The Contractor and the subcontractors shall cooperate to the fullest extent with the Authority in all matters relating to the aforementioned insurance and shall comply with all requirements of all insurance policies procured by the Authority. They shall also at their own expense furnish the Engineer or a duly authorized representative with copies of all payrolls, correspondence, papers, records and other things necessary or convenient for dealing with or defending against any claims and for procuring or administering the aforementioned insurance including furnishing the name of any of their employees, officers, or agents whose presence or testimony is necessary or convenient in any negotiations or proceedings involving such insurance.

INSURANCE PROCURED BY CONTRACTOR

The Contractor, in its own name as insured, shall maintain and pay the premiums on the policy or policies of insurance for coverage(s) as hereinafter described, which shall cover its operations hereunder, shall be effective throughout the effective period of this contract, and shall afford coverage(s) in not less than the amounts set forth below:

- A. Commercial Automobile Liability Insurance** covering the use of all Owned, Non-Owned, and Hired Vehicles with a combined Bodily Injury and Property Damage Limit together with any excess liability or umbrella liability insurance coverage of at least Five Million (\$5,000,000) Dollars. Automobile Insurance must include all Additional Insureds and be scheduled as primary on the Excess policy.

- a. Coverage is to be endorsed to reflect that the insurance provided is to be primary and non-contributory for the Contractor, and all Additional Insureds and indemnities named in the Contract.
 - b. Should the Contractor engage a Subcontractor, the same conditions will apply under this Contract to each Subcontractor, however, the Subcontractor shall be required to maintain limits of liability of not less than Five (5) Million Dollars per occurrence and in the aggregate, with said limits applicable on a per project basis, or such greater limits as may be required by the Contractor.
- B. Commercial Professional Liability Insurance (CPLI), if required,** covering the design and engineering services required by Contract of at least Three Million (\$3,000,000) Dollars. Should the Contractor engage a Subconsultant, the Subconsultant shall be required to maintain limits of liability of not less than Three (3) Million Dollars per occurrence and in the aggregate, with said limits applicable on a per project basis, or such greater limits as may be required by the Contractor.
- E.** Where an Off Project Site property exposure exists, the Contractor at its sole expense shall furnish to the Port Authority, Certificates of Insurance and other required documentation evidencing “All Risk” Property Damage Insurance for the replacement value of said property and which shall provide for those entities listed on Schedule 1 to each be a Loss Payee as its interest shall appear, and shall contain a provision requiring the insurance carriers to waive their rights of subrogation against all Additional Insureds and indemnities named in the Contract. Any materials that are stored offsite that will be permanently affixed to the project should be covered under the Builder’s Risk policy, subject to the policy territory.
- F.** The above insurance shall each contain the following wording verbatim and provide an endorsement on the insurance certificate:
“The Port Authority is interested in the maintenance of this insurance and it is agreed that this insurance will not be canceled or not renewed without at least thirty (30) days’ advance written notice to the Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York, 12th Floor, 10003, Attn: Boris Pisman.”

- G.** The amount of insurance contained in aforementioned insurance coverages, shall not be construed to be a limitation of liability on the part of the Contractor or any of its Subcontractors, and the carrying of the insurance described shall in no way be interpreted as relieving the Construction Manager of any responsibility of liability under the Contract.
- H.** The Contractor shall file certificates of insurance prior to the commencement of Work and with the Port Authority which shall be subject to the Port Authority's approval of adequacy of protection and the satisfactory character of the Insurer. In the event of failure of the Contractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Port Authority shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of the Contractor who agrees to furnish all necessary information thereof and to pay the cost thereof to the Port Authority immediately upon presentation of a bill.
- I.** The Contractor and Subcontractors performing Work or services in connection with the Project shall maintain "All Risk" Property Insurance for Temporary Structures and Contractor's Tools and Equipment at the site until completion of their Work. Coverage is to be provided on a replacement cost basis including the perils of Flood, Earthquake and Terrorism (TRIA) and which shall provide for those entities listed on Schedule 1 to each be a Loss Payee as its interest shall appear, and shall contain a provision requiring the insurance carriers to waive their rights of subrogation against the Additional Insureds listed in Schedule 1 below.
- J.** Any type of insurance or any increase of limits of liability not described above which the Contractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
- K.** The Contractor agrees to fully cooperate with the Port Authority including, but not limited to:
- a. Cooperation with the WTC Safety Program as developed in conjunction with the Port Authority, the Port Authority's Consultants and Insurance Carrier.
 - b. Cooperating with any potential accident or claim investigations and any specific reporting requirements.

- c. Allowing the Port Authority to audit Contractor's records to determine appropriate charges and credits for all insurance costs.

- L.** Further, the certificate of insurance and the liability Policy(ies) shall be specifically endorsed that *“The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority”*

- M.** Coverage is to be provided on an “occurrence” basis with carriers licensed and admitted to do business in the State of New York or otherwise acceptable to the Port Authority, and shall have an A.M. Best Rating of A – “VII” or better.

- N.** A copy of the appropriate certificate(s) are to be submitted upon the request of the Port Authority.

- O.** Subrogation.
Any policies effected by the Contractor on its owned and/or rented equipment and Materials shall contain a provision requiring the insurance carriers to waive their rights of subrogation against the Port Authority, and all Additional Insureds and indemnities named in the Contract.

- P.** Within five (5) days after the award of this Contract and prior to the start of Work, the Contractor must submit an original Certificate of Insurance to the Port Authority at the location where the Work will take place. This Certificate of Insurance MUST show evidence of the above insurance policy or policies, stating the agreement/contract number prior to the start of Work. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Management, a certified copy of each policy, including the premiums.

Schedule 1 – Indemnitees and Additional Insureds:

- a) The Port Authority of New York and New Jersey
- b) WTC Retail LLC
- c) 1 World Trade Center LLC
- d) The Port Authority Trans-Hudson Corporation
- e) STV Construction, Inc.
- f) NYS Department of Transportation
- g) Tishman Construction Corporation
- h) Tishman Realty & Construction Co., Inc.
- i) Tishman Construction Corporation of New York
- j) Silverstein Freedom Tower Development LLC, and its Affiliates
- k) 2 World Trade Center LLC
- l) 3 World Trade Center LLC
- m) 4 World Trade Center LLC
- n) World Trade Center Properties LLC
- o) 1 WTC Holdings LLC
- p) 2 WTC Holdings LLC
- q) 3 WTC Holdings LLC
- r) 4 WTC Holdings LLC
- s) Silverstein Properties, Inc.
- t) Silverstein East WTC Facility Manager LLC
- u) WTC Redevelopment LLC
- v) Silverstein WTC Mgmt. Co. LLC
- w) Silverstein WTC Mgmt. Co. II LLC
- x) Silverstein WTC Properties LLC
- y) Silverstein WTC LLC
- z) Silverstein 2/3/4 WTC Redevelopment LLC
- aa) Spring World Inc.
- bb) Spring WTC Holdings Inc.
- cc) WTC Investors LLC

- dd) Net Lessees' Association of the World Trade Center
- ee) WTC Management and Development LLC
- ff) Silverstein WTC Management and Development LLC
- gg) WTC Investors Management and Development LLC
- hh) Larry A. Silverstein
- ii) The City of New York
- jj) The Lower Manhattan Development Corporation
- kk) The World Trade Center Memorial Foundation
- ll) Metropolitan Transportation Authority

The term "Affiliate" means, as applied to any Person, any other Person or other business entity which is and continues to be Controlled By, or which Controls, or which is Under Common Control With or which is Controlled By an Entity which Controls, or into or with which the Entity is merged or consolidated if an assignment or other transfer is required in connection with such merger or consolidation with, that Person. The term "Control" means the power to direct or cause the direction of the business decisions of a Person, whether through the ownership of voting securities or by contract or otherwise (it being understood that the right of an owner of equity in a Person to make or veto major decisions shall not constitute such power to direct or cause the direction of the business decisions of such Person as would prevent another equity owner to have Control of such Person as contemplated by this definition); and the terms "Controlled By", "Controls", and "Under Common Control With" shall have the meanings correlative to the foregoing.

The term "Entity" means any individual, partnership, limited liability company, corporation, trust or other entity.

The term "Person" means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, and any federal, state, county or municipal government or any political subdivision, bureau, department, authority or agency thereof.

CHAPTER VI

RIGHTS AND REMEDIES

RIGHTS AND REMEDIES OF AUTHORITY

The Authority shall have the following rights in the event the Chief Engineer shall deem the Contractor guilty of a breach of any term whatsoever of this Contract:

The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through other contractors.

The right to cancel this Contract as to any or all of the Work yet to be performed.

The right to specific performance, an injunction or any other appropriate equitable remedy.

The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the Contractor's failure to procure insurance satisfactory to the Authority within the time limit specified in the Clause hereof entitled "Insurance Procured by Contractor" and the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Authority indicating that he cannot or will not perform any one or more of his obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that he will be able to perform any one or more of his obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that he will be able to perform any one or more of his obligations under this Contract; any false certification at any time by the Contractor as to any material item certified pursuant to the clauses of the Information For Bidders entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, Etc; Disclosure of Other Required Information", "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee", and "Certification of Participation in a State-Registered Apprenticeship Program", any false certification at any time by the Contractor or a subcontractor pursuant to the clause "Prevailing Rate of Wage Certification" set forth in the Information for Bidders, or the willful or fraudulent submission of any signed statement pursuant to such clauses which is false in any material respect; or the Contractor's incomplete or

inaccurate representation of its status with respect to the circumstances provided for in such clauses.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of the Authority shall not be deemed to limit any other rights or remedies which the Authority would have in the absence of such enumeration; and no exercise by the Authority of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop it from exercising such other rights or remedies.

RIGHTS AND REMEDIES OF CONTRACTOR

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Authority, the Contractor expressly agrees that no default, act or omission of the Authority shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Engineer shall so direct) to suspend or abandon performance.

PERFORMANCE OF WORK AS AGENT FOR CONTRACTOR

In the exercise of its right to take over and complete Work as agent for the Contractor, for which provision is made in the clause hereof entitled "Rights and Remedies of Authority", the Authority shall have the right to take possession of and use or permit the use of any and all plant, materials, equipment and other facilities provided by the Contractor for the purpose of the Work and the Contractor shall not remove any of the same from the site of the Work without express permission. Unless expressly directed to discontinue the performance of all Work, the Contractor shall continue to perform the remainder thereof in such manner as in no way will hinder or interfere with the portions taken over by the Authority.

In the certificate of total compensation earned, for which provision is made in the clause hereof entitled "Final Payment", the Engineer will separately state the amount of Work performed by the Authority as agent for the Contractor, credit to the Authority the cost thereof, and credit to the Contractor the compensation earned thereby; and the difference between them shall be payable by the Contractor to the Authority, or vice versa as the case may be. If such difference is in its favor, the Authority may deduct it from any moneys due the Contractor, and if such moneys be insufficient, the balance thereof shall be payable to it on demand; if in the Contractor's favor, it shall constitute part of the Final Payment.

The exercise by the Authority of its right to take over the Work shall not release the Contractor or his sureties from any of his or their obligations or liabilities under this Contract or the Performance and Payment Bond.

NO ESTOPPEL OR WAIVER

The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, issued or made under this Contract or otherwise issued or made by it, the Engineer, or any officer, agent or employee of the Authority, from showing at any time the true amount and character of Work performed, or from showing that any such acceptance, certificate or payment is incorrect or was improperly issued or made; and the Authority shall not be precluded or estopped, notwithstanding any such acceptance, certificate or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on his part to comply strictly with this Contract, and any moneys which may be paid to him or for his account in excess of those to which he is lawfully entitled.

Neither the acceptance of the Work or any part thereof, nor any payment therefor, nor any order or certificate issued under this Contract or otherwise issued by the Authority, the Engineer, or any officer, agent or employee of the Authority, nor any permission or direction to continue with the performance of Work, nor any performance by the Authority of any of the Contractor's duties or obligations, nor any aid lent to the Contractor by the Authority in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Authority, its Commissioners, officers, agents or employees shall be deemed to be a waiver of any provision of this Contract or of any rights or remedies to which the Authority may be entitled because of any breach thereof, excepting only a resolution of its Commissioners, providing expressly for such waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Work, because of any breach hereof, shall be deemed a waiver of any money damages to which the Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

chapter vii

MISCELLANEOUS

SUBMISSION TO JURISDICTION

The Contractor hereby irrevocably submits himself to the jurisdiction of the Courts of the State of New York and to the jurisdiction of the Courts of the State of New Jersey in regard to any controversy arising out of, connected with, or in any way concerning the Bid or this Contract. The Contractor agrees that service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Authority, either by registered or certified mail addressed to the applicable office as provided for in the clause hereof entitled "Service of Notices on the Contractor", by registered or certified mail addressed to any office actually maintained by the Contractor or by actual personal delivery to the Contractor if the Contractor be an individual, to any partner if the Contractor be a partnership or to an officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

PROVISIONS OF LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

INVALID CLAUSES

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

NON-LIABILITY OF THE AUTHORITY REPRESENTATIVES

Neither the Commissioners of the Authority nor any officer, agent, or employee thereof shall be charged personally by the Contractor with any liability or held liable to him under any term or

provision of this Contract, or because of its execution or attempted execution, or because of any breach hereof.

SERVICE OF NOTICES ON THE CONTRACTOR

Whenever provision is made in this Contract for the giving of any notice to the Contractor, its deposit in any post office or post office box, enclosed in a postpaid wrapper addressed to the Contractor at his office, or its delivery to his office, shall be sufficient service thereof as of the date of such deposit or delivery, except to the extent, if any, otherwise provided in the clause entitled "Submission to Jurisdiction". Until further notice to the Authority the Contractor's office will be that stated in his Bid. Notices may also be served personally upon the Contractor; or if a corporation, upon any officer, director, or managing or general agent; or if a partnership upon any partner.

Changes

Acceptance of Contractor's Work Order bid will be by Work Order Contract signed by the Port Authority. The Port Authority may at any time, by a written order, make changes within the general scope of this Work Order Contract in any one or more of the following: drawings, designs, or specifications. Any such changes will be known as "Extra Work" and shall result in the issuance of a Change Order. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made in the Contract price or performance schedule, or both, and the Contract shall be modified in writing accordingly.

Work Order Bids for Extra Work shall be submitted with a detailed breakdown, which shall include, at a minimum, labor, equipment and materials.

Any claim by the Contractor for adjustment under this section must be asserted within thirty (30) days from the date of receipt by the Contractor of a notification of change: provided, however, that nothing in this section, "CHANGES," shall excuse the Contractor from proceeding with the Contract as changed. Except as otherwise provided herein no payment for CHANGES shall be made, unless the Changes, have been authorized in writing by the Port Authority

For all changes, the Contractor shall certify that its valuation of any such change is made in good faith; that the supporting data relied upon by the Contractor to calculate the value of the change is accurate and complete to the best of the its knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes it is entitled in accordance with the Contract; and that the senior officer of the Contractor certifying the value of the change is duly authorized to certify the valuation of the change on behalf of the Contractor. Should there be a dispute or disagreement as to whether Contractor is entitled to an adjustment in price or schedule, Contractor shall proceed as directed by Port Authority on a not to exceed basis

and shall not defer or delay compliance with such directive pending resolution of the dispute or disagreement in accordance with this Contract.

All Work completed by the Contractor pursuant to a Change Order shall be billed to the Port Authority on a separate invoice.

MODIFICATION OF CONTRACT

No change in or modification, termination or discharge of this Contract, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or his duly authorized representative, provided, however, that any change in or modification, termination or discharge of this Contract expressly provided for in this Contract shall be effective as so provided.

The authority of any person to order Work or to alter the Contract Drawings and Specifications does not include the power to cancel, modify or waive any provision of the Form of Contract, and no officer or other representative of the Authority shall have the power so to do unless and until hereafter so authorized by or pursuant to a resolution of the Commissioners of the Authority or by or pursuant to a resolution of their appropriate Committee.

PUBLIC RELEASE OF INFORMATION

The Contractor and all his subcontractors shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Contract, without first obtaining the written approval of the Chief Engineer. Such approval may be withheld if for any reason the Chief Engineer believes that the publication of such information would be harmful to the public interest or is in any way undesirable. This provision shall survive termination or expiration of this Contract.

PERFORMANCE AND PAYMENT BOND

Contractor

Surety

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned⁴ Contractor and surety company (or companies), as principal and surety (or sureties), respectively, are hereby held and firmly bound unto The Port Authority of New York and New Jersey (herein called the "Authority") in the penal sum of Two Million Five Hundred Thousand Dollars and No Cents (\$ 2,500,000.), for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns. Each surety, however, if there is more than one, shall be jointly and severally liable for said penal sum.

Signed this _____ day of _____ 20

The condition of the above obligation is that

WHEREAS, the above named principal has entered into a Contract in writing with the Authority, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated under this Contract, and

WHEREAS, the Authority has required this bond for the faithful performance of all obligations imposed by said Contract and also for the payment of all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract;

⁴ Insert names of the Contractor and surety company (or companies) in the appropriate columns. If space is insufficient add rider.

If the Contractor is a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of _____".

If the Contractor is a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of _____".

If the Contractor is an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of _____".

NOW, if the said principal shall well and faithfully do and perform the things agreed by him to be done and performed according to the terms and true intent and meaning of said Contract and if all lawful claims of subcontractors, materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

This undertaking is for the benefit of the Authority and all subcontractors, materialmen and workmen having lawful claims arising out of the performance of said Contract, and all such subcontractors, materialmen and workmen (as well as the Authority itself) shall have a direct right of action upon this bond; but the rights and equities of such subcontractors, materialmen and workmen shall be subject and subordinate to those of the Authority.

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the construction, or by any payment thereunder before the time required therein, or by any waiver of any provision or condition thereof (whether precedent or subsequent), or by any assignment, subletting or other transfer thereof or of any part thereof or of any construction to be performed or any moneys due or to become due thereunder; and said sureties do hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulate and agree that any and all things done and omitted to be done by and in relation to assignees, subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal.

The sureties shall give the General Counsel of the Authority the following notices:

Written notice of an intent to pay any claim of a subcontractor, materialman or workman hereunder;

Written notice within five days of the institution of an action by a subcontractor, materialman or workman hereunder.

The sureties shall not pay the claim of any subcontractor, materialman or workman hereunder until the expiration of thirty days after receipt by said General Counsel of notice under either subparagraph A or B above, describing the claim to be paid.

IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(Seal)

By ⁵

Principal

Surety

By ⁶

APPROVED AS TO ACCEPTABILITY OF SURETIES:

Credit Manager

20

⁵ If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

⁶ Add signatures of additional sureties, if any.

ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION

State of _____

SS:

County of _____

On this _____ day of _____, 20____, before me personally came and appeared _____, to me known, who being by me duly sworn, did depose and say that he resides at

_____; that he is the _____ of _____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(Notary Seal)

(Notary Signature)

ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

State of _____

SS:

County of _____

On this _____ day of _____, 20____, before me personally came and appeared

_____, to me known, and known to me to be one of the members of the firm of _____ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(Notary Seal)

(Notary Signature)

ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

State of _____

SS:

County of _____

On this _____ day of _____, 20____, before me personally came and appeared _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

(Notary Seal)

(Notary Signature)

AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY

DRAFT

SPECIFICATIONS

DIVISION 1

GENERAL PROVISIONS

CONSTRUCTION REQUIRED BY THE SPECIFICATIONS

These Specifications relate generally to the performance of the Work, which may include but not be limited to the following: demolition of concrete and/or asphalt pavement, installation of temporary power and lighting to perform the Work, removal and disposal of asbestos, asbestos-containing material and asbestos-contaminated materials away from the Authority property, removal and disposal of lead, lead-containing and lead contaminated material away from the Authority property, removal and disposal of universal wastes away from the Authority property, scheduling and coordination of the individual Work Orders on the site, as required by the Engineer and staging of the work to minimize disruption of on-going construction at the site, including adherence to restricted work hours, all as directed by the Engineer and in accordance with Work Order(s) issued by the Engineer; and “performance of Work” and words of similar import shall mean the furnishing of such facilities and the doing of such things.

The Specifications require the doing of all things necessary or proper for or incidental to the matter referred to in the immediately preceding paragraph.

AVAILABLE PROPERTY

Subject to the conditions elsewhere stated herein, those areas to be occupied by the permanent construction will be made available to the Contractor upon the commencement of his first operations at the construction site.

The Contractor will be permitted to use only so much of the aforesaid areas as is necessary for the performance of the Contract, and he must at all times so conduct his operations as not to encroach upon or block the portions used by others. The Engineer may at any time make joint or exclusive assignments of particular portions thereof, either to the Contractor or to others, and may take over and use for other purposes any portions which, in the opinion of Engineer, are not required for the performance of the Contract.

The Contractor shall daily clean up the areas made available to him so that they are free at all times of refuse, rubbish, scrap material or debris, within the section of Division 1 herein entitled "Safety Provisions" and any of the requirements contained in a particular Work Order .

CONSTRUCTION SITE Security Requirements

The Port Authority of New York and New Jersey operates facilities and systems at which terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Authority reserves the right to impose multiple layers of security requirements on the performance of the Work of the Contract, including on the Contractor, subcontractors and materialmen, depending upon the level of security required, as determined by the Authority. The Contractor shall comply, and shall ensure that his subcontractors and materialmen comply, with the following security requirements:

Identity Checks, Background Screening and Issuance of Photo Identification Cards

No person will be permitted on or about the construction site without a Facility Photo ID issued by the Authority. Facility Photo IDs are required for employees of the Contractor, subcontractors and materialmen. All employees of the Contractor, subcontractors and materialmen shall wear Facility Photo IDs in a conspicuous and clearly visible position whenever they are working at the construction site.

As part of the requirement for the issuance of Facility Photo IDs, the Contractor shall perform background checks through the Authority's authorized background screening operator—currently the Secure Worker Access Consortium (SWAC)—and pass at a “HIGH” level. Information on the SWAC process, including office locations and hours of operation, is available on the following website:

<http://www.secureworker.com/>.

The Contractor shall coordinate with the Engineer at least 5 business days in advance to obtain Facility Photo IDs. The SWAC ID card, a state issued driver's license and an additional form of identification shall be presented by each workman and materialman in order to be issued a Facility Photo ID by the Authority. Facility Photo IDs will be issued at no cost to the Contractor.

The Contractor shall ensure that all workmen and materialmen renew their Facility Photo ID prior to the respective ID cards expiration dates. Any workman or materialman with an expired Facility Photo ID shall not be permitted access to the construction site.

Construction Site Access Control:

The Authority may provide for construction site access control, inspection and monitoring by security guards retained by the Authority. However, this provision shall not relieve the Contractor of his responsibility to secure equipment and Work at the construction site at his own expense.

At the beginning of each work period or work shift, the Contractor shall furnish to the security guards, if any, or to the Engineer a memorandum showing for that work period or work shift:

The name and company affiliation of each employee of the Contractor or of a subcontractor who is expected to enter the construction site and,

The name of each firm expected to deliver materials, service equipment or perform other services and a description of such materials or services.

C. High Security Areas:

- 1.) If Work under this Contract is required in high security areas, as may be designated as such by the Authority, the Contractor shall comply with certain security procedures while performing Work in such areas. The security procedures may require that the Contractor, subcontractors or materialmen performing Work in such areas be escorted to and from these areas by security personnel designated by the Authority. Further, the Contractor, subcontractors or materialmen may be required to be monitored by security personnel designated by the Authority while performing Work in certain high security areas.*
- 2.) Prior to the start of Work at the construction site, the Contractor will be provided with a description of the high security areas from the Authority, which will be in effect on the date that Work commences. The description of high security areas may be changed at any time by the Authority during the duration of this Contract. The Contractor shall notify the Authority no less than twenty-four hours prior to the performance of any Work in a high security area. The Contractor shall conform to the security procedures as may be established by the Authority and the escorting and monitoring of workmen and materialmen hereunder.*

The Authority may impose, increase, and/or upgrade security requirements for the Contractor, subcontractors and materialmen during the duration of this Contract to address changing security

conditions and/or new governmental regulations. The Contractor will be compensated for changes to the security requirements as directed by the Engineer at the Net Cost of such Work. "Net Cost" shall be computed in accordance with the clause of the Form of Contract entitled "Net Cost". Performance of such Net Cost Work shall be as directed by the Engineer.

OPERATIONS OF OTHERS

During the time that the Contractor is performing the Contract, other persons will be engaged in other operations on or about the construction site including facility operations and maintenance, tenant operations, pedestrian and vehicular traffic, all of which shall remain uninterrupted. The Contractor shall so plan and conduct his operations as to work in harmony with others engaged at the construction site and not to delay, endanger or interfere with the operations of others (whether or not specifically mentioned above), all to the best interests of the Authority and the public and as may be directed by the Engineer.

LABOR ACTIONS

Whenever any labor strike, slowdown, work stoppage, picketing or other labor action which might interfere with the performance of the Contract, or of other Authority or PATH contracts or the operation of any Authority or PATH facility occurs at the construction site or at any other Authority or PATH facility as a result of the Contractor's (or its subcontractor's) utilization of particular means, methods or manpower to perform the Work required by the Contract, the Contractor shall pursue all remedies which are appropriate and available to him to avoid such interference.

CONTRACTOR'S MEETINGS

The Contractor shall conduct job progress and coordination meetings with subcontractors in his field office every two weeks, or as frequently as job conditions require or the Engineer may request. The Engineer shall be notified and, at his option, may attend these meetings. The Contractor shall prepare and distribute minutes to the Engineer and the subcontractors within forty-eight (48) hours of the day following the meetings.

The Contractor shall attend separate job progress and coordination meetings with the Engineer every two weeks, or at times otherwise requested by the Engineer.

CONTRACT DRAWINGS

Contract Drawings may be issued by the Engineer as part of a Work Order.

The Contract Drawings will not show all of the details of the Work and are intended only to illustrate the character and extent of the Work to be performed. Accordingly, they may be supplemented during the performance of the Work by the Engineer or by the Contractor subject to the approval of the Engineer, to the extent necessary to further illustrate the Work.

Nothing in the Contract Drawings will be intended as a representation as to the existence, nature or location of any utilities, structures, obstructions, conditions or materials except to the extent that such drawings expressly contain such a representation. An indication on the Contract Drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials will not constitute a representation as to the conclusions to be drawn therefrom nor a representation that no others exist in addition to those shown, even in the same location; nor does the absence of any indication on said drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials constitute a representation that none exist.

SPECIFICATIONS

Specifications may be issued by the Engineer as part of a Work Order.

SHOP DRAWINGS, CATALOG CUTS AND SAMPLES

When specifically directed by the Engineer in a Work Order, the Contractor shall specifically prepare for this Contract all Shop Drawings which may be required in addition to the Contract Drawings or in addition to any other drawings which the Engineer may issue in supplementing the Contract Drawings. As used in this contract, the terms “Working Drawings” and “Shop Drawings” are used interchangeably.

The Engineer shall have authority to agree in writing with the Contractor on behalf of the Authority upon compensation for the preparation of Working Drawings and Catalog Cuts prepared pursuant to this numbered Section, and no amount shall be included in the Net Cost for the preparation of such Working Drawings and Catalog Cuts.

All submissions shall contain specific reference to the contract drawing and technical specification section to which they apply, as indicated below or as otherwise identified, as the Engineer may require. In general, submissions shall specifically reference Contract Drawing numbers or Specification section numbers for which the item pertains. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, conformance to the specified performance and design criteria, materials, test results and similar information to enable the Engineer to review the submittal as required.

The Contractor shall also submit six copies to the Engineer for review and approval pursuant to the approved submittal schedule, of all Catalog Cuts and samples for conformance to the requirements of the Contract Drawings and Specifications. All Catalog Cuts and samples shall have been reviewed by the Contractor and shall be accompanied by a specific written indication that the Contractor has reviewed the submittal for conformance with the Contract Drawings and Specifications and shall be identified clearly as to material, supplier, manufacturer's procedures and pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing, Catalog Cut and sample, the Contractor shall have determined and verified all quantities, dimensions, conformance to the specified performance and design criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed and coordinated each Shop Drawing or Catalog Cut with other Shop Drawings and Catalog Cuts and with other requirements of the Work.

At the time of each submission, the Contractor shall give the Engineer specific written notice of each variation in any Shop Drawing, Catalog Cut and sample from the requirements of the Contract Drawings or Specifications and, in addition, shall cause a specific notation of each such variation to be made on each submittal to the Engineer, for review and approval of each such variation.

The Engineer's review and approval of Shop Drawings, Catalog Cuts or samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Drawings or Specifications unless the Contractor has in writing called the Engineer's attention to each such variation at the time of submission as required hereunder and the Chief Engineer has given written approval of each by an express specific written notation thereof incorporated in or accompanying the Shop Drawing, Catalog Cut or sample approval. Approval of Shop Drawings, Catalog Cuts and samples which are inconsistent with the requirements of the Contract Drawings and Specifications shall not be deemed to waive or change such requirements or to relieve the Contractor of his obligations to perform such requirements unless the Chief Engineer shall expressly and specifically state that he is waiving or changing such requirements, as stated above.

Where a Shop Drawing, Catalog Cut or sample is required no related Work shall be performed prior to the Engineer's review and approval of the submission.

The format for Shop Drawings prepared by the Contractor shall be as follows: Standard "D" size drawings with outside cut line dimensions of 22 inches by 34 inches and showing in detail all dimensions and description of materials. Two borders shall be drawn. The first shall be drawn one-half inch from the outside edges (top, bottom, left and right). The second shall be drawn inward to the drawing, one-half inch from the top, bottom and right border lines and one and one-half inch from the left border line. The inside borders on these drawings shall be 20 inches by 31 inches. A title block shall be shown on the right side of the drawing adjacent to the inside border identifying the Contractor's Name, Contract Title, Contract Number, cross-referenced Contract drawing number, Specification reference number and related paragraph and applicable signatures. These drawings shall be arranged in systematic order and numbered consecutively.

Upon receipt of the submittal, the Engineer will review the Shop Drawing, Catalog Cut or sample for conformance to the design information and materials shown on the Contract Drawings and contained in the Specifications. Approval by the Engineer shall not constitute a

complete review or approval of the means, methods, techniques, sequences or procedures of construction, except where a specific means, method, technique, sequence or procedure of construction is specifically delineated in or required by the Contract Drawings or Specifications, and the approval shall not constitute a review and approval in regard to safety precautions or programs incident thereto. The review and approval of a separate item will not in itself indicate approval of the assembly in which the item functions. Any design shown on the Shop Drawings and prepared by the Contractor, his subcontractors, their detailers, or their professional engineers is the complete responsibility of the Contractor.

After approval has been given to any Shop Drawing or Catalog Cut no change will be permitted thereon unless approved in writing by the Engineer.

Before final payment for the Work is made, the Contractor shall submit to the Engineer only those previously approved or approved as noted Shop Drawings, which have been revised by field changes.

The Contractor shall mark-up the approved and approved as noted Shop Drawings directing specific attention to revisions reflecting the permanent construction as actually made. In accordance with the requirements specified in this numbered clause, the Contractor shall submit one original print of these drawings, marked "FINAL SHOP DRAWING – NOT FOR REVIEW", dated, and signed by the Contractor to the Engineer for verification. By signature, the Contractor is verifying that the drawing reflects the as-constructed condition.

All drawings, data, calculations and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared in connection with this Contract and submitted to the Authority shall become the property of the Authority. The Authority shall have the non-exclusive right to use or permit the use of all such drawings, data and other papers and any ideas or methods represented thereby for any purpose and at any time without additional compensation. No such papers shall be deemed to have been given in confidence. Any statement or legend to the contrary in connection with such drawings, data or other papers and in conflict with the provisions of this paragraph shall be void and of no effect.

SUBSTITUTION

Where a brand or make is specified in Specifications or called for or mentioned on the Contract Drawings, if any, and the phrases "similar and equal to" or "approved equal" are used in connection therewith, substitutions for the brands or makes specifically named may nevertheless be made only in accordance with the Section hereof entitled "Workmanship and Materials".

WORKMANSHIP AND MATERIALS

Workmanship and materials shall in every respect be free from defects of any kind and shall be in accordance with the best modern practice and whenever the Contract Drawings, Specifications

or directions of the Engineer admit of a doubt as to what is permissible or fail to note the quality of any construction the interpretation which calls for the best quality is to be followed. Workmanship shall conform to applicable Specifications, manufacturer's instructions and recommendations for installation of products for the applications shown on the Contract Drawings, all of which shall be subject to the provisions of the Section of Division 1 GENERAL PROVISIONS entitled "Inspections and Rejections".

Materials and Equipment incorporated into the Work shall be new except as may be otherwise herein specifically required, and shall comply with make, size, type and quality specified, or as specifically approved in writing by the Chief Engineer in accordance with the Section of Division 1 GENERAL PROVISIONS entitled "Substitution".

Reference to standards of any society, institution, association, or governmental authority in the Specifications or on the Contract Drawings, whether specific or by implication, shall mean for such standards which are part of the building code in effect for Work of this Contract, the edition date published in such code; and such references which are not part of the building code, shall mean the latest edition date in effect at the time of opening of Bids upon the present Contract unless specifically stated otherwise.

In addition, various paragraphs of these Specifications may contain references to certain standard or tentative specifications or requirements of various organizations. Unless otherwise stated, these references are to be construed as referring to the specifications and requirements in effect on the date set for opening Bids upon the present Contract.

If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be employed by the Contractor in performing the Work. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the approved instructions of the applicable supplier except as otherwise provided in the Contract Drawings or Specifications.

In case of a discrepancy between a description or requirement in the Contract Drawings and Specifications for any material or equipment and a catalog number or other designation for the same material or equipment (even though stated to be acceptable), the description or requirements shall control.

All inventions, ideas, designs and methods contained in the Specifications and Contract Drawings in which the Authority has or may acquire patent, copyright or other property rights are hereby expressly reserved for the exclusive use of the Authority. The Specifications and Contract Drawings contain confidential information which is disclosed only to enable this Contract to be performed. Said Specifications and Drawings must not be used for any purpose detrimental to the interest of the Authority and must not be produced or copied in whole or in part or used for furnishing information to others without the written consent of the Authority,

provided, however, that the Contractor may, when the performance of the Contract so requires, furnish said information to others for the purpose of engaging or informing subcontractors and materialmen.

If, in accordance with this Contract, the Contractor furnishes research, development or consultative services in connection with the performance of the Contract and if in the course of such research, development or consultation patentable subject matter is produced by the Contractor, its officers, agents, employees, subcontractors or materialmen, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but as between the Contractor and the Authority the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. Such license may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority, but such license shall not be otherwise transferable.

The right to use all material, software, firmware, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction required in connection with this Contract and to which a patent, copyright or other intellectual property right applies or may apply shall be obtained by the Contractor without separate or additional compensation whether the same is patented, copyrighted or otherwise protected as an intellectual property right before, during or after the performance of the Contract.

The Contractor shall indemnify the Authority against and save it harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of patent, copyright or other intellectual property right infringement arising out of or in connection with the Authority use, in accordance with the preceding two paragraphs of this numbered clause, of such subject matter or material, software, firmware, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction to which a patent, copyright or other intellectual property right applies or may apply. If requested by the Authority and if notified promptly in writing of any such claim, the Contractor shall conduct all negotiations with respect to and defend such claim without expense to the Authority. If the Authority be enjoined from using any of the facilities which form the subject matter of this Contract and as to which the Contractor is to indemnify the Authority against patent, copyright or other intellectual property right claims, the Authority may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply, temporarily or

permanently, facilities not subject to such injunction and not infringing any patent, copyright or other intellectual property right or to remove all such facilities and refund the cost thereof to the Authority or to take such steps as may be necessary to ensure compliance by the Authority with such injunction, all to the satisfaction of the Authority and all without cost or expense to the Authority.

INSPECTIONS AND REJECTIONS

All Work and all construction, processes of manufacture and methods of construction involved in or related to the performance of the Work shall be at all times and places subject to the inspection of the Engineer, acting personally or through his Inspectors, and the enumeration in these Specifications of particular portions of such Work, construction, processes of manufacture or methods of construction which will or may be inspected by the Engineer or such Inspectors shall not be deemed to imply that only such Work, construction, processes of manufacture and methods of construction will or may be so inspected. The Engineer shall be the judge of the quality and suitability of the Work, construction, processes of manufacture and methods of construction for the purposes for which they are used or to be used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall be removed immediately from the site. The fact that the Inspectors have approved the materials and workmanship shall not relieve the Contractor from his obligation to supply other material and workmanship when so ordered by the Engineer.

The Contractor shall furnish such facilities and give such assistance for inspection as the Engineer may direct, in a Work Order issued by the Engineer. In the case of materials required by the Specifications to be inspected in the factory or plant, and in the case of any other items which the Engineer may designate, the Contractor shall secure for the Engineer and his Inspectors free access to all parts of such factories or plants and shall furnish to the Engineer three copies of purchase orders, two copies of mill shipping statements and four copies of shipping statements. Moreover, in the case of such materials to be factory or plant inspected, the Contractor shall give at least ten days' notice to the Engineer of his intention to commence the manufacture or preparation of such materials.

Other than the materials and equipment specifically required to be inspected at the manufacturer's factory or plant, all materials will be inspected at the construction site and any portions thereof which are rejected by the Engineer shall be immediately removed from the construction site by the Contractor and shall be replaced with new materials by the Contractor at his own expense.

MANUFACTURERS' CERTIFICATION

Where materials and equipment are required by these Specifications to conform to certain standard or tentative specifications or requirements of any organizations, including American

Society for Testing and Materials, American National Standards Institute, Association Rules for Grading Lumber, Federal Specifications, National Electrical Manufacturers Association, American Association of State Highway and Transportation Officials, American Water Works Association and the International Municipal Signal Association, the Contractor shall furnish to the Engineer the manufacturer's written certification that each of the materials or equipment conforms to the foregoing standard or tentative specifications. The certification shall be delivered to the Engineer prior to installation of the materials to which it refers. Such certifications shall not be binding or conclusive on the Authority and may be rejected at any time by the Engineer if incorrect, improper or otherwise unsatisfactory in his opinion.

NO RELEASE OF CONTRACTOR

Any provision of this Contract for testing, inspection or approval, and any actual testing, inspection or approval, of any materials, workmanship, plant, equipment, drawings, program, methods of procedure, or of any other thing done or furnished or proposed by the Contractor to be done or furnished in connection with the Contract is for the benefit of the Authority not the Contractor. Any approval of such things shall be construed merely to mean that at that time the Engineer knows of no good reason for objecting thereto. No such provision for testing or inspection, no omission of testing or inspection, and no such approval shall release the Contractor from his full responsibility for the accurate and complete performance of the Contract in accordance with the Contract Drawings and Specifications or from any duty, obligation or liability imposed upon him by the Contract or from responsibility for injuries to persons or damage to property.

ERRORS AND DISCREPANCIES

If, in the performance of the Contract, the Contractor discovers any errors or omissions in the Contract Drawings or Specifications, or in the marks, lines and elevations furnished by the Authority in the construction undertaken and executed by him, he shall immediately notify the Engineer and the Engineer shall promptly verify the same.

If with the knowledge of such error or omission and prior to the correction thereof, the Contractor proceeds with any construction affected thereby, he shall do so at his own risk and the construction so done shall not be considered as construction done under and in performance of this Contract unless and until approved and accepted.

DIFFERING SUBSURFACE CONDITIONS

If during the performance of Work, the Contractor becomes aware of any unanticipated subsurface conditions or has cause to suspect the presence of such condition, then the Contractor shall immediately notify the Engineer, or designee thereof verbally, to be followed immediately by written notification. The Contractor shall specify the nature, location, and impact on the Work of such conditions. The Contractor shall immediately stop Work in and secure the area against injury to persons or damage to property pending further instructions from the Engineer.

The Contractor shall then conduct all necessary investigations and testing of the subsurface conditions as directed by the Engineer to identify the character and extent of the unanticipated subsurface conditions and/or to satisfy applicable Federal, State and local laws, codes and ordinances and regulations and shall notify the Engineer accordingly. The investigation program shall be submitted to the Engineer for review and approval.

In the event the Contractor discovers such subsurface conditions during the performance of the Work and (i) special handling of such condition is necessary and required for the performance of the Work as determined by the Engineer; (ii) such special handling cannot be avoided or mitigated by the exercise of reasonable measures by the Contractor; and (iii) the Contractor actually incurs increased costs caused by such condition that could not have been reasonably anticipated from the Contract Drawings, Reference Drawings and Specifications and inspection of the construction site; then in such event, as approved by the Engineer, the Contractor shall, notwithstanding any provision in this Contract to the contrary, be compensated for such costs for special handling, including the necessary investigations and testing of subsurface conditions, in accordance with the provisions of the Form of Contract clause entitled "Net Cost".

ACCIDENTS AND FIRST AID PROVISIONS

The Contractor shall promptly report in writing to the Engineer and to the Authority Manager, Claims Administration all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injuries or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damage is caused, the accident shall be reported immediately by telephone to both of the said representatives of the Authority.

The Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service, in case of accident, to any who may be injured in the progress of the Contract. He shall have standing arrangements for the removal and hospital treatment of any person who may be injured while engaged in the performance of the Contract.

If any claim is made by any third person against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the fact in writing to the aforementioned representatives of the Authority, giving full details of the claim.

SAFETY PROVISIONS

- 1) Requirements included in this section are the minimum acceptable site requirements as referenced in the current version of the Port Authority World Trade Center Site Safety, Health and Environmental Program (herein referred to as SHEP), as well as all local, State and Federal requirements. Where conflicts or discrepancies exist between requirements, the most stringent requirement shall govern. All required plans identified in the above Program shall be submitted to the Port Authority Construction Management

Team (herein referred to as CM) and others as identified in the Program for approval prior to the performance of work. The World Trade Center Site Safety, Health and Environmental Program”, Revision Number 2.0 dated 5/3/2010, or later, which can be obtained at the Authority’s website through the following link: <http://www.panynj.gov/wtcprogress/pdf/pa-wtc-shep.pdf>.

- 2) The Contractor shall comply with all current and revised provisions, regulations, guidelines and recommendations issued pursuant with Federal, state, and city laws, rules, ordinances, and regulations of regulatory authorities and agencies having jurisdiction, with regard to all matters relating to the safety and health of workers, the general public, and environmental protection. Compliance with government requirements is mandated by law and considered only a minimum level of safety performance. All work shall therefore be performed in accordance with best safe work practices recognized by the construction industry.
- 3) The Contractor shall be fully responsible for maintaining a safe, secure, and hygienic work place and for assuring that all work is performed in a manner that will not be injurious to safety or health, endangering to the public, or deleterious to the environment.
- 4) In the performance of the Contract, the Contractor shall exercise every precaution to prevent safety health and environmental hazards and incidents to site workers, the public, adjoining properties and utilities, and to secure against environmental releases. 15 days prior to the commencement of Work, the Contractor shall submit to the Engineer, for his review and approval, the Contractor’s Safety Program which shall comply with all applicable federal, state, municipal and local and departmental laws and shall include, among other things, the designation by the contractor of a qualified individual to administer such Safety Program.

NOTE: One of the following Paragraphs 5, 6, or 7 will be selected in each Work Order as issued by the Engineer.

- 5) The Contractor whose scope of work is, or will be covered under NYC DOB Chapter 33: Safeguards During Construction and Demolition, shall monitor and enforce job site safety through daily documented inspections by a NYC DOB Certified Site Safety Manager. A Certified Site Safety Manager shall be present at the worksite during all working hours, and shall have no other responsibilities other than the implementation and management of the Contractor’s health and safety plan. The candidate shall have First-Aid/CPR certification. The contractor shall provide a copy of the proposed candidate’s resume and credentials for review and approval by the Port Authority prior to the individual being hired.
- 6) The Contractor shall have present at the worksite during all working hours a dedicated safety supervisor possessing at a minimum, a current and valid OSHA 30-Hour Construction Industry Training Card, First-Aid/CPR certification, and have at least five (5) years of documented experience as a safety professional with experience in the type of work to be performed. This safety supervisor shall be responsible for safety, health, and environmental compliance and shall

have no other responsibilities other than safety management. The contractor shall provide a copy of the proposed candidate's resume and credentials for review and approval by the Port Authority.

- 7) The Contractor shall designate, and will have present on site with each work crew for the duration of that work shift, at least one competent person as defined by the OSHA standard 29 CFR Part 1926.32, and as elsewhere referenced in other 29 CFR Part 1926 standards, and will at a minimum perform the duties as described in 29 CFR 1926.20(b) (2). The designated competent person shall be responsible, and have the authority from their employer to take prompt corrective action to eliminate the hazard(s). At a minimum, each competent person shall possess a current and valid OSHA 30-Hour Construction Industry Training card and First-Aid/CPR certification. The Contractor shall assign, when required by a specific 29 CFR Part 1926 standard, a qualified or authorized person as defined in OSHA standard 29 CFR Part 1926.32.
- 8) The Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as all the work is completed and the Contractor has removed all workers, remaining materials and equipment from the Site, or upon the issuance of the Port Authority Certificate of Final Completion, whichever shall occur last.
- 9) The Contractor shall promote a Drug, Alcohol & Smoke Free Workplace with their employees and will communicate what constitutes prohibited activities while performing work or providing services on the World Trade Center Site during their safety orientation. Workers that are found to be under the influence of or in possession of alcohol and/or illegal drugs, in possession of weapons, or smoking anywhere on Site shall be immediately removed and/or dismissed from the WTC Site with their WTC Site access credentials revoked, and/or subject to criminal prosecution as warranted by their action(s). As per the NYC Fire Code, section 1404.1 and NYC Building Code, sections 3301.1.2 and 3303.7 smoking on any construction site, inclusive of the WTC Site, is strictly prohibited and violations may be issued to the contractor and/or other relevant parties.
- 10) The Contractor shall have a progressive disciplinary action program for all personnel who fail to enforce, follow or comply with established policies and procedures. Disciplinary action shall be handled through a 3-Strike Policy (i.e., 1-verbal, 2-written and/or limited removal from the WTC site, 3-limited to permanent removal from the WTC from the site), however, depending on the seriousness of the violation, immediate revocation of the employee's WTC Identification Badge can occur, as referenced in section 9. Records shall be available for review by the Port Authority.
- 11) For work performed under OSHA 29 CFR 1926 Subpart M: Fall Protection, each contractor shall submit to the CM prior to the start of work a comprehensive and enforceable 100% Fall Protection and Prevention Program consistent with Subpart M as well as the requirements outlined in the WTC Site Safety, Health, and Environmental Program. This program shall be followed by all employees, vendors, and consultants when working or walking on all unprotected vertical or horizontal side and edge, scaffold, and locations as identified in Subpart M, at a height equal to or greater than six feet above a lower level, or at any height above a dangerous process, operation, or piece of equipment. Fall protection systems shall be designed by qualified person, and installed and maintained by a competent person.
- 12) For work performed under OSHA 29 CFR 1926 Subpart R: Steel Erection, each Contractor shall submit to the CM prior to the start of work a comprehensive and enforceable fall protection plan.

- 13) The Contractor shall submit to the CM prior to the start of work a comprehensive and enforceable plan outlining the securing and anchorage of all materials and equipment to resist uplift attributable to high wind hazards.
- 14) The CM shall and ensure that all contractors provide a site safety orientation training session to their workers upon initial assignment. All site workers shall attend weekly “tool-box” training sessions held by the contractor who shall distribute meeting information to all project workers.
- 15) The Contractor shall ensure workers, and all sub-contractor workers are properly trained, and as required have in their possession while on-site valid and appropriate license(s), and/or certificate(s) consistent with regulations, laws, and best industry practices specific to their work activities and the tools/equipment being used as per manufacturer specifications. At a minimum, employees working at the World Trade Center site shall have a valid OSHA 10-Hour, 30-Hour Construction Safety and Health Certification card or be an authorized OSHA trainer for the construction industry. This certification must be renewed every five (5) years. A training matrix shall be readily available for review and audit on site.
- 16) Depending upon the severity of a site condition or circumstances surrounding an accident or incident, the Port Authority may require the Contractor to order a “Safety Stand-down.” Examples of conditions and circumstances that may prompt a Stand-down include, but are not limited to:
 - a) Failure to maintain a safe and healthy work environment that could potentially result in danger to workers or the general public;
 - b) Recurring deficiencies;
 - c) Willful disregard of safety requirements;
 - d) Fatality, fire, explosion, significant injury, accident, or incident;
 - e) Chemical Release or Spill;
 - f) Failure to comply with Environmental Performance Commitments.

The length of the Safety Stand-down shall be determined by the extent and severity of the incident, and condition of the work area to safely allow work to resume. During the Stand-down, the contractor shall:

- a) Inform the work crew as to the circumstances and reasons requiring the Stand-down;
- b) Identify the type of training / re-training required;
- c) Determine the type and extent of equipment / tool / machine inspection, perform the inspection, report findings, and correct

A safety stand down is not a reimbursable event and the contractor responsible shall bear full financial responsibility for the event.

- 17) The Contractor shall obtain and submit to the CM, Material Safety Data Sheets (MSDS) for all materials to be stored, and used in the work. The MSDS shall be readily available whenever required, in a convenient location, in close proximity to where the materials are used on the project. All workers shall have ready access to the MSDS. The Contractor is responsible for full compliance with OSHA Hazard Communication Standard, 29 CFR 1910.1200 .

- 18) The Contractor shall establish a housekeeping program to ensure that debris, trash, slippery items, standing water, spills, and combustible materials are removed off floors and other surfaces daily. At no time will access and egress ways be obstructed, indistinguishable, or maintained in disrepair.
- 19) The Contractor shall establish the required programs, practices, means and methods to address and control the hazards associated with their work. Examples of such plans include, but are not limited to fall protection, fire protection and prevention, scaffold use, material handling and sling use, and hand/power tool safety.
- 20) Each Contractor shall prepare an Emergency Action Plan as described in OSHA 29 CFR 1926.35, establish and maintain at all times at least two access and egress ways on their project, participate in WTC Site wide incident planning meeting, response and evacuation drills, and identify key support personnel.

In the event of an emergency impacting the Site, the public, adjoining property and utilities, or the environment, the CM may order continuous work with an increased work force for such time necessary to eliminate the emergency.

- 21) As required by the WTC SHEP, or when directed by the CM, a Job Hazard/Safety Analysis (JHA) shall be prepared. For example, a JHA shall be required, at a minimum, for Confined Space Entry Operations, Excavations requiring shoring or bracing, Critical Lifts or any non-routine hazardous operation. Prior to an activity for which a JHA Analysis was prepared, a pre-work job briefing will be held with the work crew, foremen, competent person, safety supervisor, and site safety manager and a record of this document shall be on site for review.
- 22) The Contractor shall in accordance with the Port Authority Owner Controlled Insurance Program (PA OCIP) Guide to Contractors and all terms and conditions of applicable insurance policies, promptly report in writing to the CM and to the Port Authority Manager, Claims Administration all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injuries, property damage, and/or exposure of people to chemicals or hazardous materials, giving full details and statements of witnesses. In addition, if death, serious injuries or serious damage is caused, the accident shall be reported immediately by telephone of the said representatives of the Port Authority.
- 23) The Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service, in case of accident, to anyone who may be injured in the progress of the Contract. The Contractor shall have standing arrangements for the removal from the site and hospital treatment of any person who may be injured while engaged in the performance of the Contract. The Contractor shall provide two (2) First Aid/CPR trained individuals at the construction site to administer first aid, if required.
- 24) If any claim is made by any third person against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the fact in writing to the aforementioned representatives of the Authority, giving full details of the claim and cooperate throughout the disposition of the claim in accordance with the instructions and requests of all claim investigators.
- 25) Each Contractor shall utilize the Port Authority Safety Management System Tracking Tool to document and track safety, health and environmental performance.
- 26) As required each Contractor shall complete and submit for approval Personnel Platform Lift Plans, Hot Work Program, Lifting Plans and similar documentation prior to the performance of such operations to the CM as identified in the Program or as required by the CM.

- 27) Each Contractor shall on a daily basis inspect their motor vehicles, and mechanized equipment used at the WTC Site. At a minimum, the requirements of 29 CFR 1926, Subpart O shall be followed. Any vehicle or mechanized piece of equipment not in acceptable working condition shall be immediately removed from service. A log shall be maintained on site for review and audit.
- 28) Each Contractor shall submit to the CM prior to the start of work a comprehensive and enforceable plan addressing the performance of any abrasive blasting, surface scarification, steam or water blasting, or high pressure water cutting.
- 29) Each Contractor shall submit to the CM prior to the start of work a comprehensive and enforceable plan identifying all proposed access routes, staging areas, crane locations, temporary traffic signal controls, worker and pedestrian crossings, vehicular and pedestrian gates for exit and entry, barriers, barricades, lighting, and fencing. The construction of temporary structures, other than those noted on Contract Drawings, shall require approval from the CM.
- 30) Prior to an activity that will impede, alter, impair, block, or in any way deactivate an active standpipe, sprinkler system, smoke detection system, hydrant, or existing fire protection or prevention system the Contractor shall notify the CM. Prior to performing an activity described above, the contractor shall submit to the CM for approval the following:
 - a) Date and duration of the impairment
 - b) Location and Scope of work
 - c) Area(s) impacted
 - d) Name of contractor performing work
 - e) Type of interim fire protection system that will in-place during impairment
 - f) Method of communicating emergencies
 - g) Name of person performing final inspection to verify work is complete and normal fire protection/prevention is active
 - h) Method of notifying CM of completion
- 31) The Contractor shall comply with the Rules of the City of New York (3RCNY§11-01) whereby all buildings under construction are subject to regular inspections conducted by the NYC Fire Department, Administrative Fire Company and the Bureau of Fire Prevention Construction, Demolition and Alteration (CDA) Civilian group.
- 32) A minimum of two (2) business days prior to any excavating, the Contractor shall notify the CM. The Contractor shall notify the NYC One Call Center to allow member agencies to mark locations of underground utilities prior to any excavating and confirm such notifications with the CM.
- 33) Any hazardous waste shall be disposed of in accordance with applicable law and implementing regulations.

- 34) In case of emergency involving danger to life, person or property, the engineer may order continuous work with an increased force for such time as he may deem necessary to eliminate the emergency.
- 35) The Contractor is responsible to guard, maintain and protect the wires, cables, ducts, manholes, posts and poles, signals, fire hydrants, and alarm boxes of the NYC Fire Department and not cause any interruption of the Fire Department Fire Alarm Telegraph Service. In case any such wires, cables, ducts, manholes, posts and poles, signals, fire hydrants or alarm boxes shall be disturbed, it shall be restored to its original condition.
- 36) In the event that the Contractor encounters at the construction site, material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Engineer. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Engineer.

RECYCLING OF CONSTRUCTION DEBRIS MATERIAL

The Contractor shall remove from Authority property all construction debris, demolition debris and other debris material generated from the performance of the Work of this Contract unless the material is deemed acceptable by the Engineer for on-site re-use or recycling, as may be directed in Work Order(s) issued by the Engineer, and remains at the Work site. The Contractor shall transport to recycling facilities or re-use and recycle on-site for this Contract, as applicable, no less than 75% by weight of the following types of designated debris material, to the extent arising from the Work of this Contract:

Asphalt Concrete

Portland Cement Concrete

Steel

Excess Unrestricted Soil

During the process of removal of all such designated debris material from Authority property, the Contractor shall submit to the Engineer on a monthly basis a Designated Debris Material Assessment Summary indicating the actual types and quantities by weight of the designated debris material removed for this Contract up to that point in time. In addition, the Designated Debris Material Assessment Summary shall also include types and quantities by weight of designated debris material actually re-used or recycled on-site in this Contract or, if shown on the Contract Drawings, are stockpiled for future use by the Authority. The Designated Debris Material Assessment Summary shall be accompanied by written verification from recycling and

landfill destinations identifying the originating Work site, quantity of material delivered and type of debris material for all designated debris material removed from the Work site.

DIESEL-POWERED EQUIPMENT

The Contractor and its subcontractors shall minimize all air-borne pollutants generated by diesel-powered equipment and vehicles at all times during the performance of this Contract in accordance with this numbered clause. The requirements herein apply to all land-based and barge-mounted diesel-powered construction equipment. Marine propulsion engines, marine auxiliary engines, and dredges used in construction activity are exempt from these requirements.

No diesel-powered equipment shall be brought on the construction site without meeting the following requirements unless a waiver has been granted as specified in Section D below. In addition, all such equipment and engines shall comply with all Federal, state and local regulations applicable to exhaust emission controls and safety.

Ultra Low Sulfur Diesel (ULSD) Fuel

All diesel-powered equipment to be used in the performance of the Work of this Contract shall use ULSD fuel with an average sulfur content of no more than 15 parts per million (ppm). This requirement applies to on-road and non-road diesel engines. The Engineer may collect samples of the ULSD fuel directly from the fuel tanks of the diesel-powered equipment used on the construction site in order to verify that sulfur concentrations do not exceed 15 ppm. Diesel-powered equipment not using ULSD shall be removed from the construction site or shall immediately comply with the ULSD fuel clause as directed by the Engineer and at no additional cost to the Authority.

Emissions Control Devices – Best Available Technology (BAT)

All non-road diesel-powered equipment with a rated horsepower of 50 horse power (hp) or greater and active on the construction site for any portion of a 24-hour workday for more than 20 total consecutive and non-consecutive days shall be retrofitted with Emissions Control Devices (Devices) utilizing the best available technology (BAT). The Devices shall consist of Diesel Particulate Filters (DPFs) or other measures with equivalent particulate matter (PM) removal efficiency, wherever the implementation of such a Device is feasible in the opinion of the Engineer. For non-road diesel-powered equipment rated between 50 hp and 75 hp, Diesel Oxidation Catalysts (DOCs) may be used in place of DPFs.

Both active and passive filter regeneration mechanisms shall be considered for DPFs. In cases where DPFs are not feasible for safety considerations, mechanical reasons, or where the technology would not function properly, the Contractor shall submit a request for a waiver to the Engineer for review and approval prior to the use of such diesel-powered equipment. If the Engineer grants a waiver under these circumstances, then the Contractor shall retrofit the diesel-powered equipment with Flow Through Filters (FTF) if feasible in the opinion of the Engineer. DOCs shall be used in place of DPFs or FTFs unless it is proven to the Engineer by the Contractor that the application of this type of technology is also technically infeasible.

The use of diesel-powered engines greater than 50 hp without tailpipe reduction measures will be permitted pursuant to the Engineer's approval of a written request for a waiver submitted by the Contractor in accordance with Section D below.

The use of Devices shall be targeted primarily toward the reduction of PM and secondarily to the reduction of nitrogen oxides (NOX), and shall in no event result in an increase in the emissions of either pollutant. The Devices of best available technology shall be defined as those that are contained in the U.S. Environmental Protection Agency (EPA) Verified Retrofit Technology List, the list of California Air Resources Board (CARB), Verifications, Europe's Verified Technology List (VERT), or as otherwise approved by the Engineer to provide the maximal level of pollutant reductions intended by this clause. For more information, refer to the following websites:

U.S. Environmental Protection Agency Verified Technology List:

<http://www.epa.gov/otaq/retrofit/nonroad-list.htm>

California Air Resources Board Verified Technology List:

<http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm>

Europe's Verified Technology List:

http://www.akpf.org/pub/vert_filterliste.pdf

Diesel Construction Equipment Age Requirements

To facilitate the application of verified Emission Control Devices, as well as provide lower baseline emissions, Tier 0 engines shall not be used in the performance of this Contract unless they have been upgraded to Tier 1 and then retrofitted with best available technology devices. As determined by the Engineer, exceptions will be made only for specific engines that are not readily upgraded to Tier 1, and where the Work of this Contract cannot reasonably be performed using alternative engines that comply with this clause. In such cases, the Contractor shall submit a written request for a waiver to the Engineer for review and approval prior to bringing such equipment onto the construction site.

Diesel Engine Idling Policy

The idling time of non-road and on-road vehicles shall be limited to three (3) consecutive minutes as determined by the Engineer with the following exceptions:

An on-road or non-road vehicle is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control, or is in queue when engaged in an active operation with other equipment.

It is necessary to operate defrosting, heating, or cooling equipment to ensure the safety or health of the driver or passengers.

To ensure the safe and proper operation of auxiliary equipment that is located in or on the vehicle, to accomplish the intended use of the vehicle or equipment, but only to the extent so necessary (for example - cranes and concrete mixers).

To bring the vehicle to the manufacturer's recommended operating temperature, but only to the extent so necessary.

The outdoor ambient temperature is below twenty (20) degrees Fahrenheit.

A vehicle is being actively worked on for repairs or maintenance and engine idling is necessary to effectuate such repairs or maintenance.

Electrification

Where electric power is distributed to and available throughout a construction site, electrically powered equipment shall be preferred over diesel-powered versions of that equipment.

Submittals:

The Contractor shall submit to the Engineer for review and approval an inventory list for all non-road diesel equipment and engines, and verified Emissions Control Devices. No Work shall commence utilizing diesel-powered non-road equipment rated at 50 hp or greater until the Contractor submits a comprehensive and complete inventory list inclusive of all such equipment, including the specifics of each as detailed below, and same is approved by the Engineer.

The inventory list shall be provided in an electronic format (e.g., Microsoft Word, Access or Excel), and shall include the following:

Contract number and title.

Owner of equipment's name, address, telephone number and contact person familiar with the operation and maintenance of the equipment and the emission control technologies; whether owner is the Contractor, subcontractor or rental firm.

Dates that equipment is anticipated to arrive at and depart from the site.

Number, type, make, year of manufacture, manufacturer and serial number.

Engine type, tier level, make, horsepower rating, year of manufacture, and serial number.

Approximate fuel consumption rate per shift.

Anticipated function, duration of use, and days and hours of operation.

Retrofit type, make, model, manufacturer, installation date, EPA, VERT or CARB verification number or supporting documentation related to emission control devices.

Previous acceptance or waivers granted by the Authority, or the City of New York, or the Metropolitan Transportation Authority, or another public agency that issued a waiver under the same or substantially the same standards.

On-Going Equipment Updates:

Whenever a new or additional piece of diesel-powered non-road equipment is required to complete the Work of this Contract, the Contractor shall submit to the Engineer an update of the equipment inventory list. These updates shall include the actual dates the equipment arrives and departs from the site.

Waivers:

The Contractor shall submit a written request for a waiver to the Engineer for review and approval prior to bringing equipment that does not conform to the above requirements onto the construction site. The Contractor shall demonstrate due diligence by providing written documentation of efforts to comply with this clause. For waivers based upon the unavailability of retrofit devices for certain equipment, the Contractor will generally be required to provide written documentation from more than one vendor or supplier of retrofit devices to satisfy this requirement. Waiver requests related to the use of DPFs shall take into consideration actively regenerating filters for equipment with low temperature profiles that typically preclude the application of passively regenerating filtration systems.

Equipment retrofitted with an approved device in connection with another construction contract of the Authority, or the City of New York, or the Metropolitan Transportation Authority is exempt from further retrofitting for three (3) years from the date the retrofit was approved, even if new BAT retrofit devices are available. The Contractor shall submit to the Engineer documentation of approval of a retrofit device by the Authority, or the City of New York, or the Metropolitan Transportation Authority, or another public agency that issued a waiver under the same or substantially the same standards for the equipment in question. In addition, if the Authority, or the City of New York, or the Metropolitan Transportation Authority, another public agency that issued a waiver under the same or substantially the same standards previously waived a requirement contained in this clause for a particular piece of equipment, that equipment shall be exempt from the requirement for three (3) years from the date the initial waiver was granted.

In responding to waiver requests, the following conditions will be taken into consideration with applicable documentation:

A BAT retrofit device would pose a safety hazard or impair operator visibility; or

A BAT retrofit device would void the engine warranty; or

A BAT retrofit device cannot be used for mechanical reasons; or

A BAT retrofit device or the engine would not function properly if the BAT retrofit device were installed; or

A Tier 0 engine is not readily upgraded to Tier 1, and where the task cannot be reasonably accomplished using alternative engines that do comply with this clause; or

The furnishing and installation of a BAT retrofit is more than 30 percent of the fair market value of the construction equipment; or

The Authority, or the City of New York, or the Metropolitan Transportation Authority, or another public agency that issued a waiver under the same or substantially the same standards previously approved a BAT retrofit device for the equipment in question. Such approval is valid for three years from the date it was issued; or

The Authority, or the City of New York, or the Metropolitan Transportation Authority, or another public agency that issued a waiver under the same or substantially the same standards previously granted a waiver for the equipment in question. Such waiver is valid for three years from the date it was issued.

In addition, the Engineer may, in his or her discretion, grant a waiver based upon excessive costs to satisfy the clause, undue burden on the Contractor, marginal benefits, or other relevant factors, provided adequate supporting documentation is submitted by the Contractor.

Waiver requests shall include the following:

- a. Name of contractor applying for the waiver.
- b. Contract number and title.
- c. Owner of equipment's name, address, telephone number and contact person familiar with the operation and maintenance of the equipment and the emission control technologies, whether owner is the Contractor, subcontractor or rental firm.
- d. Number, type, make, year of manufacture, manufacturer and serial number.
- e. Engine type, make, horsepower rating, year of manufacture, and serial number.
- f. Approximate fuel consumption rate per shift.
- g. Anticipated function, duration of use, and days and hours of operation.
- h. Technical explanation of safety hazard, mechanical constraint, warranty, limited availability, or functionality issues cited as basis for waiver.
- i. Written documentation from retrofit device manufacturers, engine manufacturers, or rental companies, as appropriate, supporting the stated reasons for the waiver; for waivers based upon the unavailability of a retrofit device for specified equipment, the Contractor shall provide documents from more than one supplier.
- j. If applicable, documentation of previous BAT retrofit approvals granted by the Authority, or the City of New York, or the Metropolitan Transportation Authority, or another public agency that issued a waiver under the same or substantially the same standards for the equipment in question.
- k. If applicable, documentation of previous waivers granted by the Authority, or the City of New York, or the Metropolitan Transportation Authority, or another public agency that issued a waiver under the same or substantially the same standards for the equipment in question.

3.) *Review of Waiver Application*

The Engineer will make a determination whether to approve the Waiver Request no later than 10 days after its receipt.

DAILY PROGRESS, EQUIPMENT AND LABOR REPORTS

The Contractor shall furnish to the Engineer at the end of each day Work is performed at the construction site, a memorandum showing for that day (a) the construction performed, (b) the type of equipment used identifying each piece of equipment as owned by the Contractor or rented from others; (c) a statement of any unusual happening that occurred, and (d) the names and number of workers in each trade classification that were employed. Such memorandum shall not be deemed to be a substitute for the notices, time slips, memoranda or other data required under the clauses of the Form of Contract relating to compensation for Net Cost Work.

LAWS AND ORDINANCES

In order to effectuate the policy of the Authority, the Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations and orders which would affect the Contract and the performance thereof and those engaged therein if said Contract were being performed for a private corporation, except where stricter requirements are contained in the Work Order Specifications or Contract Drawings, in which event the latter requirements shall apply. However, the Contractor shall not apply for any permits, licenses or variances in the name of or on behalf of the Authority, but shall do so in his own name where required by law, regulation or order or by the immediately preceding sentence. Nor shall the Contractor apply for any variance in his own name without first obtaining the approval of the Authority.

The Contractor shall verify that employees performing Work under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program.

SIGNS

No advertisement or sign, other than the name and address of the Contractor, will be permitted on any fences, temporary structures or elsewhere on the construction site and such advertisement will be permitted only upon the condition that it is first approved by the Engineer. In any event, the advertisement shall not exceed six feet by eight feet in overall dimensions.

CONTRACTOR'S FIELD OFFICE AND REPRESENTATIVE

When required by a Work Order issued by the Engineer, at a readily accessible point on or near the construction site, the Contractor shall maintain a field office provided with a telephone. The Contractor will be compensated for the cost of such field office at the amount(s) stipulated in such Work Order.

During the performance of any Work at the construction site, the Contractor shall have a representative thereat who shall be authorized by the Contractor to receive and put into effect promptly all orders, directions and instructions from the Engineer. The Contractor's representative shall be provided, at all times, with a conformed copy of this Contract and a copy of the Work Order(s) issued by the Engineer.

Orders and directions may be given orally by the Engineer and shall be received and promptly obeyed by the Contractor or his representative or any superintendent, foreman or other employee of the Contractor who may have charge of the particular part of the Work in relation to which the orders or directions are given. A confirmation in writing of such orders or directions will be given by the Engineer when so requested by the Contractor.

SURVEYS

The Engineer will establish a bench mark and a base line at or adjacent to the location of the Contractor's operations. The Contractor shall perform all surveys which may be required for the performance of the Contract. He shall carefully preserve any base line and bench mark which may be established by the Engineer.

The Contractor shall, in addition, furnish to the Engineer, without additional compensation therefor, any or all information and data regarding points, lines, grades, elevations and other survey information established by the Contractor during the performance of the Contract.

Surveys and measurements of quantities for purposes of computing Contractor's compensation shall be made by the Contractor as directed by and in the presence of, or jointly with, the Engineer, at the Engineer's option. Computations of quantities for payment shall be made by the Contractor and shall be subject to the approval of the Engineer.

TEMPORARY STRUCTURES

Unless otherwise provided in this Contract, the Contractor shall determine the need for and shall design, furnish and construct all barricades, fences, staging, falsework, formwork, shoring, scaffolding and other temporary structures required in the performance of the Contract, whether or not of the type enumerated in the Specifications or on the Contract Drawings, including those which would be required by law or regulation if this Contract were being performed for a private corporation. All such temporary structures shall be of adequate strength for the purposes for which they are constructed and shall be provided with graphics, warning signs and warning lights as required to inform personnel and the public of the hazards being protected against, and the Contractor shall maintain them in satisfactory condition. The design and drawings for such structures shall be prepared by the Contractor utilizing a professional engineer licensed in the state where the structure will be constructed, and when requested by the Engineer they shall be submitted for his review before being used.

The Contractor shall ensure that each temporary structure is inspected by the professional engineer who designed the temporary structure prior to initial use and submit a schedule of periodic inspections to be performed by such professional engineer to the Engineer for review. The number of periodic inspections of temporary structures to be performed by the professional engineer shall be the minimum required by law or regulation if this Contract were being performed for a private corporation. The Contractor shall also submit a signed and sealed statement of inspection from the professional engineer performing the inspection of the temporary structure, including a statement of fitness for use for the intended purpose of the temporary structure, to the Engineer for review.

Neither such approval, however, nor any requirements of the Engineer, the Specifications or the Contract Drawings shall relieve the Contractor of his responsibility for the design, construction and use of the temporary structures or from any obligations and risks imposed on him under this Contract, and any such approval or requirements shall be deemed merely to relate to minimum standards and not to indicate that the temporary structures are adequate or that they meet the Contractor's obligations under this Contract.

Temporary structures shall be painted with an approved dark color paint and shall be repainted whenever necessary during the period that the Contract is being performed. Upon completion of all Work under this Contract, the temporary structures shall be removed from the construction site.

The Engineer shall have authority to agree in writing with the Contractor on behalf of the Authority upon compensation for any design of temporary structures which he may require to be performed pursuant to this numbered Section, and no amount shall be included in the Net Cost for such design.

PERMIT AND REQUIREMENTS FOR WELDING

Prior to the commencement of any cutting or welding operations at the construction site, the Contractor shall notify the Engineer and obtain an Authority cutting and welding permit. The Authority will issue this permit without payment of a fee, and application forms may be obtained from any Resident Engineer of the Authority, at his office at the facility. Unless otherwise approved by the Engineer, all cutting and welding operations shall be performed in accordance with the conditions which form a part of said permit. The permit application must be filled out and submitted in duplicate to the Engineer at least forty-eight hours prior to commencing welding or cutting operations at the construction site.

FINAL INSPECTION

When, in the opinion of the Contractor, the construction is completed and ready for final inspection, he shall so notify the Engineer in writing and the Engineer will give said construction (including any portions with respect to which Certificates of Partial Completion have been

issued) a minute and thorough inspection. Before any Certificate of Final Completion will be issued, any defects or omissions noted on this inspection must be corrected by the Contractor.

WARRANTIES

The Specifications may provide for certain warranties of portions of the permanent construction. These warranties are intended for the greater assurance of the Authority and not as a substitute for rights which the Authority might otherwise have. Although such warranties shall be enforceable as provided, neither any requirement of this Contract with respect to warranties by the Contractor nor any guarantee or warranty given to the Contractor or the Authority by any manufacturer shall be deemed to be a limitation upon any rights which the Authority would have, either expressed or implied, in the absence of such guarantees or warranties.

REQUIREMENTS FOR CRANES AND DERRICKS

During the performance of Work at the construction site, the use by the Contractor or his subcontractors of power operated cranes and derricks for hoisting and/or rigging purposes; or for construction, alteration, demolition, excavation and maintenance purposes, including highways or sewers; or for the installation of piles; or for the hoisting or lowering of any article on the outside of any building or structure shall be subject to the approval of the Engineer in accordance with this Section.

Determinations will be made in writing by the Engineer on whether cranes and other such equipment meeting certain criteria shall be exempt from all or part of the requirements herein. Such determinations shall in no way relieve the Contractor from conformance with all applicable requirements of this Section and governing codes including the possession of a valid operator's license subject to verification by the Engineer.

The following equipment will be considered for full exemption, which means exempt from B., C., D., E., F., G., H. and I. below:

Excavating or earth-moving equipment, except cranes used with clamshells.

Augurs, churn-drills, and other drilling equipment not used for the hoisting of any objects.

Mobile cranes, including jibs and any other extensions to the boom, exceeding 50 feet but not exceeding 135 feet in length, and with a manufacturer's rated capacity of 3 tons or less used exclusively as a man-basket.

Hoisting machines permanently mounted on the bed of material delivery trucks that are used exclusively for the loading and unloading of such trucks, provided that the length of boom does not exceed the length of the truck bed by more than 5 feet, and any material transported thereon shall not be raised more than 2 feet in the unloading process.

Cranes and derricks with a manufacturer's rated capacity of less than 1 ton.

Mechanics trucks with a hoisting device used in activities associated with the maintenance and repair of construction related equipment.

Articulating boom cranes that do not have an integral hoisting mechanism and that are used exclusively for the loading and unloading of trucks or trailers, provided that the length of boom does not exceed 135 feet, and that any material transported thereon shall not be raised more than 100 feet in the unloading process.

The following equipment will be considered for Partial Exemption - I, which means exempt from B.4.), C.2.), C.4.) and D. below:

Cranes with less than 160 feet combined boom/jib length to be used for a period not exceeding 24 hours, operated entirely within Authority property and at a location at least one boom/jib length away from all Authority property.

Service cranes and clamshells with a boom length of 110 feet or less, to be operated entirely within Authority property and at a location that does not require the moving of any load over a roadway or sidewalk.

Pile drivers or clamshells operated entirely within Authority property with a soil bearing pressure not exceeding 500 pounds per square foot.

Mobile cranes, including jibs and any other extensions to the boom, not exceeding 50 feet in length and with a manufacturer's rated capacity of 3 tons or less.

The following equipment will be considered for Partial Exemption – II, which means exempt from B., C. 2.), C. 3.), C. 4.), D., F., G. and I. below:

Articulating/knuckle boom cranes used to hold, support or stabilize material to facilitate construction activity.

Cranes with a manufacturer's rated capacity of 1 ton or more.

For each crane or derrick not considered fully exempt by the Engineer, submit the following forms to the Engineer prior to delivery of the crane or derrick to the construction site: (See F. below for all forms)

A copy of a current and valid Form CD-2, entitled "Crane/Derrick/Mobile Work Platform – Approval and Operation Application/Certificate", Revised 08/15/05, as issued by the New York City Department of Buildings - Cranes & Derricks Division, hereinafter called "NYCDOB-C&D". Form CD-2 shall bear the approval stamp of NYCDOB-C&D as a "Temporary Certificate of Approval/Temporary Certificate of Operation," and shall include an expiration date, a legible CD Number, and an authorized signature from a representative of NYCDOB-C&D. In the event that such approved Form CD-2 is not available, the Contractor shall ensure that the owner of the crane or derrick files a Form CD-2 directly with NYCDOB-C&D. Submit to the Engineer proof of the filing, a copy of the completed Form CD-2, and an "acceptable to operate" inspection report issued by NYCDOB-C&D.

A fully executed Form CD-11, entitled "Equipment Owner Identification Form", Revised 12/03, as issued by NYCDOB-C&D.

A fully executed Form CD-16, Statement of Notification to Community Boards.

A fully executed Form CD-4, entitled "Crane/Derrick/Mobile Work Platform – On- Site Inspection Application/Certificate", Revised 12/03, as issued by NYCDOB-C&D. Form CD-4 shall be accompanied by drawings and calculations, all signed and sealed by a Professional Engineer licensed in the state of New York. The drawings and calculations shall clearly indicate the following:

Location of each crane or derrick.

All pertinent features of the site.

Supporting platforms and structures.

Swing and reach of each crane or derrick.

If the crane or derrick location is within two hundred feet (200') of an NYC subway line or facility, approval from New York City Transit ("NYCTA") is required prior to the placement, assembly, or erection of the crane or derrick. In such cases, a Certificate of On-Site Inspection cannot be issued without NYCTA written approval.

Upon the review and acceptance in writing by the Engineer of all of the above submissions, the crane or derrick will be permitted to enter the construction site. Coordinate all such deliveries with the Engineer.

Upon delivery to the construction site for cranes or derricks considered for Full Exemption or Partial Exemption – I or Partial Exemption – II by the Engineer, submit the following to the Engineer in accordance with A. above. For all other cranes or derricks, submit all of the following to the Engineer:

Names, classifications, and license numbers of each crane or derrick operator and the master, tower, or climber crane rigger.

For cranes or derricks to be operated solely on Authority property, file Form CD-8, entitled "Technical Report – Statement of Responsibility", Revised 12/03, as issued by the NYCDOB-C&D. Form CD-8 shall be completed in its entirety with the exception of Box #5B, and signed and sealed by a Professional Engineer licensed in the state of New York in Box #5A.

Upon review and acceptance by the Engineer of all submitted drawings and associated documentation specified above, the Contractor will be permitted to place and/or assemble the crane or derrick at the construction site, with the exception of tower or climber cranes. For tower or climber cranes, additional submittals and inspections shall be required as specified in 4.) below.

For cranes or derricks to be operated on other than Authority property, file all forms, drawings and associated documentation directly with NYCDOB-C&D. Upon the submission to the Engineer of a current and valid "Certificate of On-Site Inspection" as issued by NYCDOB-C&D, will the Contractor be permitted to assemble or erect the crane or derrick at the construction site.

For tower or climber cranes, in addition to the documentation in B. and C. above, submit the following to the Engineer:

A fully executed Form CD-7, entitled "Notification of Erecting or Dismantling of Climber or Tower Crane", Revised 07/07. Form CD-7 shall be accompanied by a copy of the license of each master or tower rigger designated to supervise the erection of the crane and all associated documentation required to ensure compliance with the manufacturer's recommendations. Form CD-7 shall also be accompanied by signed and sealed drawings by a Professional Engineer licensed in the state of New York for the erection, jumping, climbing and dismantling of the tower or climber crane. Documentation and drawings shall include the following:

Serial number identification of equipment to be used for all rigging and lifting operations including all machines to be used for erection or dismantling.

Detailed listing of assemblies and components required for erection and dismantling of rigging and lifting equipment, including but not limited to lifting frame, climbing hydraulic cylinders, upper basket, lower basket, outriggers, communication system, tie-downs, dogs, horn, lights and weathervane.

Location of rigging and lifting equipment, assist cranes, sidewalk sheds, surrounding buildings, protection for their roofs and pick-up points, loads, and radius of swing of all loads. In addition, submit to the Engineer the safe load from the crane manufacturer's approved load radius chart for lift radius.

Weight list certified by the crane manufacturer listing all assemblies and components to be lifted. All components shall be clearly marked with their weight painted on the assembly, or stamped on metal tags attached to the assembly. In lieu of an equipment manufacturer's certification, submit documentation signed and sealed by a Professional Engineer licensed in the state of New York certifying the weight list and indicating how such weights were determined.

Locations of the centers of gravity for all asymmetrical components.

Sequence of operation detailing erection, jumping, climbing and dismantling, along with the rigging materials to be used in such operations.

Written certification by a Professional Engineer licensed in the state of New York that all safety devices on each crane to be used in the erection, jumping, climbing and dismantling operations have been calibrated in accordance with the crane manufacturer's recommendations.

Names, license numbers (as applicable) and contact information for each licensed rigger, rigger foreman, site safety manager, crane safety coordinator and entity performing the erection, jumping, climbing, and/or dismantling Work.

Load test procedure signed and sealed by a Professional Engineer licensed in the state of New York identifying the weights to be used and the load moment and line pull testing to be conducted in accordance with b. below.

A load test shall be conducted on each tower or climbing crane by a Professional Engineer licensed in the state of New York in accordance with the load test procedure submitted under (x) above. Upon completion of the load test and determination that the results are satisfactory, submit to the Engineer the signed and sealed report certifying acceptance of the results by the Professional Engineer licensed in the state of New York.

A fully executed Form CD-12, entitled "Designation of Safety Coordinator" Revised 12/03, as issued by NYCDOB-C&D.

A signed and sealed report documenting the results of the field inspection of the crane in the "unassembled state (for cranes delivered in the unassembled state)" performed by a Professional Engineer licensed in the state of New York and certifying that all crane parts are in satisfactory condition, and acceptable for assembly and erection.

A copy of the Safety Coordination Meeting Log as stipulated in Section BC 3319 entitled "Cranes and Derricks" of the Building Code for the City of New York (BCCNY) (3319.8.2 through 3319.8.8, and 3319.10.2). Conduct the safety coordination meeting within the week prior to the erection, jumping, climbing, or dismantling of a tower or climber crane in accordance with BCCNY and notify the Engineer one week prior to the meeting.

Upon review and acceptance by the Engineer of all documentation in B. and C. above, the Contractor will be permitted to erect the tower or climber crane at the construction site.

Prior to the use and/or operation of each crane or derrick, including tower or climber cranes, at the construction site when the crane or derrick will be operated solely on Authority property, complete the following:

Performance of a field inspection of the crane or derrick in the “assembled state” by a Professional Engineer licensed in the state of New York in accordance with BCCNY Reference Standard RS 19-2 including the verification, inspection, and certification of the following:

That the crane or derrick has a current and valid Form CD-2 as issued by NYCDOB-C&D for the configuration to be used at the construction site.

That the support, dunnage, configuration and location of the crane or derrick have been constructed and positioned in accordance with the drawings and calculations submitted to the Engineer with Form CD-4.

That the crane or derrick is in working order and there is no visible damage including, but not limited to, the following items:

Bent or missing lacings

Pins are properly installed and have no visible fatigue

Maladjustment of control mechanisms interfering with proper operation

Excessive wear of control mechanisms components and contamination by lubricants or other foreign matter

Malfunction of operational aids

Hydraulic hoses

Deformation, chemical damage, cracks and wear of hooks and latches

Rope reeving for compliance with crane manufacturer’s specifications

Malfunction and excessive deterioration of electrical apparatus and accumulation of dirt and moisture

Hydraulic system for proper oil level

Tires for recommended inflation pressure

Upon the completion of the field inspection and the determination that the crane or derrick is sound and has been assembled and positioned in accordance with the drawings and calculations submitted to the Engineer with Forms CD-4 and CD-7, submit to the Engineer both a signed and sealed inspection report certifying conformance by the Professional Engineer licensed in the state of New York and a fully executed Form CD-8, signed and sealed in Box #5B.

For tower or climber cranes, in addition to the above, procure the services of a New York State Licensed Surveyor to perform a plumbness survey, a licensed testing laboratory to perform anchor bolt pull-out testing, and a licensed rigger to certify compliance with the manufacturers bolt torque values connecting sections. Submit to the Engineer a fully executed Form CD-6, entitled "Crane / Derrick and Work Platform – Plumbness And Torque Notification/Anchor Bolt Pull Out Test" Revised 12/03, as issued by NYCDOB-C&D.

Upon the review and acceptance by the Engineer of a signed and sealed inspection report and Final Form CD-8 (and Form CD-6 for tower and climber cranes), the Contractor will be permitted to use and operate the crane or derrick. Form CD-4 and Final Form CD-8 (and Form CD-6 for tower and climber cranes), as accepted by the Engineer will constitute the "Certificate of On-Site Inspection."

Requirements for inspection and operation of cranes at the construction site:

Monthly inspections and reports shall be performed, prepared and signed by a competent person as defined in Federal Register Part II, Department of Labor, Occupational Safety and Health Administration, 29 CFR Part 1926 Cranes and Derricks in Construction; Final Rule (OSHA), and a copy of each inspection report shall be store in the crane cab for three months.

Pre-lift meetings shall be held as outlined in Federal Register Part II, Department of Labor, Occupational Safety and Health Administration, 29 CFR Part 1926 Cranes and Derricks in Construction; Final Rule (OSHA). Submit pre-lift meeting minutes to the Engineer.

No crane or derrick operator shall start an operation when the wind speed exceeds 30 miles per hour or the wind speed is forecast to reach 30 miles per hour before the operation can be completed. Tower cranes shall not be raised to new operating levels when the wind speed exceeds 20 miles per hour.

Operating and jumping procedures shall comply with the requirements of Chapter 33/Section BC 3319 and Reference Standard RS 19-2 of the BCCNY.

The forms issued by the NYCDOB-C&D listed below can be found on the following website:

www.nyc.gov/html/dob/downloads/pdf/cd

CD-2 - Crane/Derrick/Mobile Work Platform – Approval and Operation Application/ Certificate, Revised 08/15/05

CD-4- Crane/Derrick/Mobile Work Platform – On-Site Inspection Application/ Certificate, Revised 12/03

CD-6- Crane/Derrick and Work Platform – Plumbness And Torque Notification/Anchor Bolt Pull Out Test, Revised 12/03

CD-7- Notification of Erecting or Dismantling of Climber or Tower Crane, Revised 07/07

CD-8- Technical Report – Statement of Responsibility, Revised 12/03

CD-11- Equipment Owner Identification Form, Revised 12/03

CD-12- Designation of Safety Coordinator, Revised 12/03

CD-16- Statement of Notification to Community Boards

CD-22- Inspection Request for Assembled/Unassembled Crane, Derricks, and Mobile Work Platforms revised 10/05

If Form CD-2 issued by the NYCDOB-C&D expires while the crane or derrick is in use at the construction site on Authority property, the Contractor shall ensure that the owner of the crane or derrick files all renewals and/or extensions directly with NYCDOB-C&D. Submit proof of the filing along with a copy of the completed Form CD-2 to the Engineer. Upon receipt of any such renewals or extensions issued by NYCDOB-C&D, submit copies to the Engineer.

The estimated review time for all crane and derrick submissions to the Engineer is five (5) business days. If the Contractor has not received any reply by the fourth day of the review, contact the Engineer.

The NYCDOB-C&D issues a letter of deficiency to the Authority or stop work order to the Contractor while the crane or derrick is on Authority property, the Contractor shall cooperate fully with the NYCDOB-C&D to ensure that all acceptable corrective actions will be taken immediately. Keep the Engineer advised during the performance of all remedial Work.

TEMPORARY UTILITY SERVICES

When stipulated in a Work Order issued by the Engineer, the Contractor may use existing utility services at the Authority facility where Work under this Contract is performed. Provide necessary connections to such services or extend as required to maintain adequate power, artificial lighting and water; and provide temporary heat and ventilation to maintain adequate environmental conditions to facilitate the Work.

Materials for such services may be new or used, but must be adequate in capacity for the required usage, must not create unsafe conditions, and shall not violate requirements of utility company requirements and applicable codes and standards, as if the Authority were a private corporation.

The cost for securing and maintaining such temporary utilities will be paid as indicated on the Work Order issued by the Engineer. Utilities serving the Authority facility shall be maintained in operation to serve the needs of the facility not involved in Work under this Contract, except as absolutely necessary for cutoff, cutover or other change of the affected system, service or utility. Arrange with the Engineer to establish a mutually satisfactory schedule of time(s) and date(s) of disruption of such systems, services or utilities.

Completely remove temporary materials and equipment when directed by the Engineer, or when their use is no longer required. Clean and repair damage caused by temporary installations or use of temporary services to original condition.

Costs of water, power, and fuel used for all existing utility services will be paid as indicated on the Work Order(s) issued by the Engineer.

TEMPORARY SANITARY FACILITIES

Unless the Engineer specifically approves the use of existing toilet facilities at the construction site, make arrangements for securing temporary toilets, wash facilities and drinking water including required disposable materials for use by the Contractor, subcontractors, materialmen or other persons over whom the Contractor has control. Comply with regulations and health codes for the type, number, location, operation and maintenance of fixtures and facilities. Install facilities where directed by the Engineer, and remove from Authority property when no longer required.

The arrangements for securing and costs of sanitary facilities will be paid as indicated on the Work Order(s) issued by the Engineer including temporary toilets, wash facilities and drinking water including toilet tissue, paper towels, paper cups and similar disposable materials for use by the Contractor, subcontractors, materialmen or other persons over whom the Contractor has control. Comply with regulations and health codes, which would be applicable if the Authority were a private corporation, for the type, number, location, operation and maintenance of fixtures and facilities. Install facilities where directed by the Engineer, and remove from Authority property when no longer required.

PROGRESS SCHEDULE

When requested by the Engineer, within seven calendar days after issuance of a Work Order, the Contractor shall submit a progress schedule for the approval of the Engineer. The progress schedule shall show the dates for the commencement and completion of the different portions of

the Work Order. After the approval of the schedule the Contractor shall maintain and periodically update it at intervals determined by the Engineer. No changes shall be made therein without the written approval of the Engineer. Approval of any progress schedule shall not limit, affect or impair the Contractor of his obligation to complete the Work Order by the time(s) required in the Work Order, even though the schedule approved may be inconsistent with such completion, and in accordance with all other provisions of the Contract, nor shall it constitute a representation by the Authority that the Contractor will be able to proceed or complete the Work in accordance with the schedule.

The Engineer shall have the right at any time when in his judgement the Work is not proceeding in accordance with the approved progress schedule, or at anytime it is likely that the Work may not be completed by the time(s) required in the Work Order, even though the Contractor is proceeding in accordance with the approved progress schedule, to order the Contractor to increase the number of men employed, to use additional plant or equipment, or to take such other steps as may be required to assure the completion of the various operations within the time(s) allotted therefore in the approved schedule or by the aforesaid completion time(s).

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PERMIT AND REQUIREMENTS FOR ELECTRICAL DISTRIBUTION WORK

Notify the Engineer at least 24 hours prior to the commencement of operations at the construction site which in any way may affect existing electrical circuits or require entry into any electrical manhole at the airport, and obtain from the Engineer, Authority Form PA 2497A entitled, "Electrical Work Permit". Execute such form in triplicate each morning prior to commencement of Work on existing electrical circuits or entry into manholes. The Authority will issue this form to the Contractor without payment of a fee.

Allow sufficient time for loads to be transferred to other circuits from the circuits upon which Work is to be performed and for lock out of circuits which are within existing load centers. Comply with other requirements contained on the back of the "Electrical Work Permit" insofar as they are applicable to the Work to be performed under this Contract. In any event, reconnect and place back in operation electrical circuits activating parking field, roadway, runway operations, apron and taxiway lights prior to the close of operations on each day, and in any event before sunset of each day. Overtime operations or premium time required to be paid by the Contractor for or in connection with this numbered Section shall be borne by the Contractor without separate or additional compensation therefor.

HOURS OF WORK AND CONSTRUCTION STAGING

Hours of Work

Subject to all requirements stated elsewhere herein, the Work shall be performed in accordance with the hours of Work specified in the Work Orders issued by the Engineer.

The Contractor shall submit to the Engineer, at least one week in advance, his scheduled hours of Work for each week.

Do not perform Work at the construction site on a Federal legal holiday or a holiday of the state(s) in which Work is being performed, unless otherwise permitted by the Engineer.

Construction Staging

Construction Staging - as specified in the Work Orders issued by the Engineer.

Notices

All notices, approvals and consents required or desired to be given under this Agreement shall be in writing, and shall be (i) personally delivered, (ii) transmitted by certified mail, postage prepaid, return receipt requested, or (iii) transmitted by telecopier or facsimile (as elected by the Party giving such notice). Notices shall be addressed and delivered as follows:

If to Owner:

The Port Authority of New York
and New Jersey
Attention: Steven Plate
Deputy Chief of Capital Planning/
Director, WTC Construction
115 Broadway, 10th Floor
New York, New York 10006

With a copy to

The Port Authority of New York
and New Jersey
Attention: General Counsel
225 Park Avenue South
New York, New York 10003

If to Consultant:

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Entire Agreement

This Agreement contains the complete statement of all the agreements among the parties hereto with respect to the subject matter thereof, and all prior agreements among the parties hereto

respecting the subject matter hereof, whether written or oral, are merged herein and shall be of no further force or effect. This Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

Parties Bound

This Agreement shall be binding upon the Recipient and its respective successors. The foregoing shall not be affected by the failure of any successor of Recipient to join in this Agreement or to execute and deliver an Acknowledgement hereof.

Authority

The undersigned individual(s) executing this Agreement on behalf of the Recipient below represent(s) that he is (they are) authorized to execute this Agreement on behalf of the Recipient and to legally bind Recipient.

Disclosure of Ownership Rights or License

Nothing contained herein shall be construed as a grant or conferral by the Port Authority of any rights by ownership, license or otherwise in any Information.

No Liability

Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Recipient with any liability, or held liable to the Recipient under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date written below.

**THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY**

XXXXXXXXXXXXXX:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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